

MASSACHUSETTS’ BUREAU OF SPECIAL EDUCATION APPEALS MEDIATION MANUAL

20 USC s.1415 (Federal)

34 CFR §300.506 (Federal)

MGL Ch. 71B (Massachusetts)

603 CMR 28.08 (4) (Massachusetts)

29 U.S.C. 794 (504) (Federal)

A group of children looking at a puzzle.



***When a student’s team cannot reach agreement through the team process, mediation is a powerful and collaborative tool for resolution.***

**ACKNOWLedGEMENTS**

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ABOUT THIS RESOURCE

This publication was developed by the Bureau of Special Education Appeals (BSEA) with guidance from The Center for Appropriate Dispute Resolution in Special Education (CADRE).

This manual draws from the OSEP’s [Dispute Resolution Self-Assessment](https://www.cadreworks.org/sites/default/files/resources/OSEP%20Part-B-Self-Assessment.pdf) and [OSEP Memo and Q&A on Dispute Resolution (2013)](https://sites.ed.gov/idea/idea-files/osep-memo-and-qa-on-dispute-resolution/), US Dept. of Education policy documents, comments to the regulations, and relevant case law. This resource is not intended to interpret, modify, or replace requirements of federal or State law, or serve as a definitive treatment of the regulations.

\*\*The BSEA reviews its mediation procedures annually to promote 1) alignment with state and federal law, 2) clarity, and 3) to facilitate an efficient, effective, and accessible mediation system. \*\*

A group of children smiling



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**MEDIATION**

Mediation is a voluntary process that brings parents and school districts together when they have a dispute concerning any matter arising under the Individuals with Disabilities Education Act (“IDEA”) 20 USC s 1401 et. Seq, [34 CFR § 300](https://sites.ed.gov/idea/), § 504 of the Rehabilitation Act of 1973 [42 U.S.C. § 12131](https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title42-chapter126-subchapter2&saved=%7CKHRpdGxlOjQyIHNlY3Rpb246MTIxMDEgZWRpdGlvbjpwcmVsaW0p%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim) et seq, and Massachusetts’ special education regulations [603 CMR § 28](https://www.doe.mass.edu/lawsregs/603cmr28.html?section=08), including issues that arise prior to the filing of a due process complaint. Parties do not have to file for a due process hearing in order to access mediation. Mediation provides an opportunity for parties to have confidential discussions with a qualified and impartial mediator to reach a mutually agreeable resolution. Mediation through the Bureau of Special Education Appeals (“BSEA”) is available to all parents[[1]](#footnote-1), adult students[[2]](#footnote-2), and public education agencies at no cost to the participants. The goal of mediation is for the parties to resolve the dispute and execute an enforceable, legally binding written agreement reflecting that resolution.

The Bureau of Special Education Appeals seeks to provide:

* Meaningful and straightforward access to mediation for all families and school districts.
* Trained, experienced, and impartial mediators who align practices with federal and state special education laws.
* Effective communication with stakeholders about the mediation process so that families and school districts understand their options when they don’t agree.
* Procedures that align with IDEA and state special education regulations.
* Efficient infrastructure to support mediation program oversight, case management, data collection and reporting, and implementation of procedural safeguards related to mediation.
* Empowerment of families and school districts to use mediation to resolve their disagreements collaboratively.

While mediation cannot guarantee specific results, mediation can be an efficient and effective method of dispute resolution between parents and school districts. It offers a path for a student’s team to move forward when it does not have a shared vision of the student’s needs.

Data about the use of BSEA mediation can be found [here](https://www.mass.gov/info-details/fiscal-year-2022-bsea-statistics).

VOLUNTARY

Mediation is a voluntary process and can be requested by parents, adult students, or school districts. No party can be compelled to mediate. By entering the mediation process voluntarily, the parties are agreeing to work collaboratively and in good faith towards a mutually agreeable resolution.  Families and school districts must both voluntarily agree to use the mediation process. Participation in mediation is *not* a prerequisite to filing a due process hearing complaint and parents are not required to participate in mediation before their due process complaint is moved forward. If one party is not in agreement to use mediation, the mediation will not go forward. In this case, mediators and the Coordinator of Mediation are available to discuss the benefits of mediation with any party, including that mediation is voluntary, and that, if successful, could result in the resolution of the dispute without the need to use more formal, potentially costly, and adversarial due process proceedings.

CONFIDENTIAL

All discussions that occur in mediation, including the negotiation discussions and discussions involving any settlement positions of the parties in mediation, are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in State or Federal Court [34 CFR §[300.506(b)(8)](https://sites.ed.gov/idea/regs/b/e/300.506/b/8); [M.G.L. ch. 233, § 23C](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section23C)]. For example, mediation discussions, any draft resolutions, and any unsigned mediated agreements are confidential, cannot be shared with parties who were not present during the mediation, and are not admissible in any court or other contested proceeding. Additionally, mediation discussions may not be referenced at future team meetings. A party *may* share mediation conversations with their attorney.

The Participants agree not to call the mediator to testify concerning the mediation or to request that the mediator provide any materials from the mediation in future or pending litigation. The mediator will explain and reinforce mediation confidentiality during and after the mediation. If parties have any questions about the confidentiality of mediation, the mediator is available to explain further.  The requirement of confidentiality of the mediation process is automatic and may not be altered or modified by parties to mediation conducted under §[300.506](https://sites.ed.gov/idea/regs/b/e/300.506). In addition, neither the IDEA nor its implementing regulations create exceptions to confidentiality requirements for discussions that occurred during the mediation process when a complaint is resolved through DESE’s complaint system, Problem Resolution System (“PRS”), pursuant to §§[300.151 through 300.153](https://sites.ed.gov/idea/regs/b/b). The confidentiality requirement also prohibits disclosure of mediation discussions during the resolution of a state administrative complaint [[OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), A-25](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf)].

Further, the confidentiality requirement related to mediation discussions applies regardless of whether or not the parties resolve a dispute through the mediation process. If the parties resolve a dispute through the mediation process, they must execute a legally binding, written agreement that also includes a statement that all discussions which occurred *during* the mediation process will remain confidential [34 CFR §[300.506(b)(6)(i)](https://sites.ed.gov/idea/regs/b/e/300.506/b/6)]. Neither the IDEA nor its implementing regulations specifically address whether the mediated agreement itself must remain confidential. However, the parties may agree to include a provision in the mediated agreement that limits or permits disclosure of the agreement [[OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), A-24](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf)].

Irrespective of these provisions, (§[300.506(b)(8)](https://sites.ed.gov/idea/regs/b/e/300.506/b/8)), States and LEAs may not require parties to the mediation process to sign an additional confidentiality pledge, agreement, or form prior to, or as a precondition of, the commencement of the mediation process. [[OSEP Letter to Anonymous (July 31, 2020](https://sites.ed.gov/idea/files/osep-letter-to-anonymous-07-31-2020.pdf)]

WRITTEN BINDING AGREEMENT BETWEEN THE PARTIES

Parties demonstrate good faith by participating in mediation with the goal of resolving the dispute by executing (signing) an enforceable, legally binding written agreement reflecting that resolution. The terms of the mediated agreement will be reached through discussion during the mediation process. The mediator will work with the parties during the mediation to narrow points of agreement to resolve some or all of the issues in dispute. The mediator will then write the terms of agreement reached between the parties into a mediated agreement. Parties may discuss many issues during mediation, but only the terms that are listed in a fully executed legally binding mediated agreement have been agreed to and are enforceable. The mediated agreement will state that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in state or federal court.

The mediated agreement must be signed by the parent and/or adult student and a school district representative with the authority to bind the district to its terms. Once signed, the mediated is binding upon the parties. As mediation is voluntary, the parties will only sign a mediated agreement if they agree to its terms. There is no repercussion for not entering into a mediated agreement during mediation. BSEA mediation sessions end in a signed mediated agreement in approximately 80% - 85% of mediations.

The mediated agreement must be signed by the legal decision maker for the student, and a representative of the public educational agency who has the authority to bind that agency [34 CFR §[300.506(b)(6)](https://sites.ed.gov/idea/regs/b/e/300.506/b/6)]. These are the “Parties” to mediation. It is important that the parties understand that once signed, the mediated agreement is legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States [34 CFR §§[300.506(b)(7)](https://sites.ed.gov/idea/regs/b/e/300.506/b/7) and [300.537](https://sites.ed.gov/idea/regs/b/e/300.537)]. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding written agreement that sets forth the terms of the agreement and states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in state or federal court.

Please note, while discussions that occur during the mediation process must be confidential, neither the IDEA nor its implementing regulations specifically address whether the mediation agreement itself must remain confidential. Parties are typically able to present a signed mediated agreement at hearing, however the discussion that occurred during the mediation process may not be shared at hearing. The confidentiality of information provisions in the Part B regulations in 34 CFR §§[300.611 through 300.626](https://sites.ed.gov/idea/regs/b/f) and the Family Educational Rights and Privacy Act (FERPA), and its implementing regulations in 34 CFR part 99 apply to mediated agreements.

If there are issues that were not addressed by the mediated agreement, the parent may file a complaint with PRS or file a BSEA due process hearing request to seek to resolve those issues

BENEFITS OF MEDIATION

* Mediation is a collaborative, problem-solving process allowing the parties to have control over decision-making and the outcome.
* The parties come to the mediation table because, while they do not necessarily agree on how to address an issue, they want to work collaboratively to resolve the disagreement and move forward for the benefit of the student, often considering resolution options that are outside of those typically available through the team process.
* Mediators do not decide who is or has been right or wrong, they work with the parties to reach a mutually agreeable resolution.
* Mediation is a less adversarial process than hearing and is more protective of the relationship between families and school districts.
* When both parties agree, mediations are usually scheduled within 4 - 6 weeks of the request to mediate, typically providing opportunity for final resolution sooner than due process hearing or the PRS state complaint process.
* Mediation is often less financially burdensome on parties compared to due process hearings.
* When mediation results in a written agreement, parties have an increased commitment to and ownership over the resolution contributing to high compliance rates.
* BSEA mediators are highly trained and experienced and specialize in special education mediation.
* Mediated agreements are workable solutions individually tailored to the parties.
* IEPs, Placement, and 504 Accommodation Plans can be amended through mediation.
* A request for mediation may be made at any point in the special education process.
* Mediation may be helpful in resolving issues that are subject to PRS complaints or BSEA due process hearings. Mediation will not be used to delay or deny a parent’s right to a hearing on the parent’s due process complaint or to deny any other rights afforded under the IDEA. Parties can file for a BSEA Hearing or a Problem Resolution System Complaint and concurrently pursue mediation. If mediation resolves the issues, the moving party may withdraw its request for Hearing or PRS complaint.



THERE IS NO COST TO EITHER PARTY FOR BSEA MEDIATION

The IDEA provides that each state must bear the cost of the mediation process required under section 615(e) of the IDEA and 34 CFR §[300.506](https://sites.ed.gov/idea/regs/b/e/300.506), including fees charged by the mediator, cost of recruitment and training of mediators, and the cost of meetings described in 34 CFR §[300.506(b)(2)](https://sites.ed.gov/idea/regs/b/e/300.506/b/2) to discuss the benefits of the mediation process. States may not require their LEAs to use Part B funds to pay the costs of mediation [[71 Federal Register, August 14, 2006), pg. 46624]](https://www.govinfo.gov/content/pkg/FR-2006-08-14/pdf/06-6656.pdf). A person who otherwise qualifies as a mediator is not an employee of an LEA or DESE solely because the mediator is paid by the entity or the Commonwealth to serve as a mediator [[34 CFR §300.506(c)(2)](https://sites.ed.gov/idea/regs/b/e/300.506/c/2)].

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**THE MASSACHUSETTS MODEL**

The Coordinator of Mediation and Facilitation

The Coordinator administers the IDEA Part B and, through an Interagency Service Agreement with DPH, the Part C mediation program at the BSEA and represents the program to state and federal education agencies. The Coordinator supervises the mediators, provides professional development to the mediators, oversees mediation coverage of each school district, ensures equal access to mediation across the state, directs mediation outreach programming, assists the Director of the BSEA in developing mediation policy, responds to community and stakeholder feedback and requests for information, provides technical assistance to mediation and facilitation participants, meets with participants who would like to better understand the voluntary an confidential requirements of mediation as well as how mediation may be helpful, oversees federal and state mediation data collection and evaluation, provides real time support and assistance to mediators, and oversees the BSEA Facilitated Team Meeting program.

The Coordinator of Mediation is a trained, qualified mediator and adheres to all the requirements for employment as a BSEA mediator, outlined below. The Coordinator occasionally conducts mediation and facilitation sessions.

The Coordinator offers and provides informational sessions to Special Education Parent Advisory Committees (“SEPACs”), school districts, collaborative, MA approved special education schools, the Federation for Children with Special Needs, state agencies, and groups that support families with children with disabilities. During the school year, the Coordinator also offers periodic statewide Zoom informational sessions open to all, no RSVP required. The link for these sessions can be found [here](https://www.mass.gov/info-details/mediation-and-facilitation-informational-sessions). If you would like to request an informational session for your group, please reach out to the Coordinator. Contact information is provided below.

The Mediators

The BSEA employs six (6) full-time, trained, experienced, impartial mediators who are randomly assigned to cover a specific region of Massachusetts. BSEA mediators are trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of special education and related services [34 CFR §§[300.506(b)(1)(iii)](https://sites.ed.gov/idea/regs/b/e/300.506/b/1)].

Decisions about the effectiveness of specific mediation techniques are based upon the mediator’s independent judgment and expertise.  Because of the need to allow flexibility in the independent judgment and expertise of each mediator and the unique issues of each dispute, other than providing for the confidentiality of discussions that occur during mediation, the IDEA does not require mediators to use specific techniques or strategies during mediation. Formal training is required for mediators in Massachusetts and all BSEA Mediators have completed the state required mediation training [([M.G.L. ch. 233, § 23C](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter233/Section23C)), [71 Federal Register, August 14, 2006](https://www.govinfo.gov/content/pkg/FR-2006-08-14/pdf/06-6656.pdf), pg. 46695].

The BSEA’s use of full-time, dedicated mediation professionals ensures that its mediators are highly experienced and well-trained in mediation techniques. Additionally, extra attention is given to ensuring that mediators are knowledgeable about special education laws and regulations. Initial training and robust annual professional development programming ensure that BSEA mediators are skilled professionals who demonstrate their command of effective mediation techniques and in-depth understanding of special education laws and programming while working with families and school districts.

Each mediator provides technical assistance to mediation participants about dispute resolution options as well as information on how to request mediation, how to prepare for mediation, what to expect at mediation, the confidentiality and voluntariness of mediation, and information about mediated agreements. BSEA mediators schedule, convene and conduct sessions, and write the mediated agreements in all of the mediations in their assigned regions. This allows parties to connect with the mediator from the beginning of the process ensuring an accessible and clear mediation process.

The mediators also offer informational sessions about mediation to the SEPACs and School Districts in their region. Parent groups, school districts, and local organizations that work with and support students with disabilities are encouraged to reach out to the mediator who covers their region to request a free, informational session about BSEA mediation and facilitation. Contact information can be found below.

BSEA Mediators are impartial. They may not be and are not employees of DESE or any LEA in the state of Massachusetts. They must not and do not have a personal or professional interest that conflicts with their objectivity in any mediation they are conducting [34 CFR §[300.506(c)(1)](https://sites.ed.gov/idea/regs/b/e/300.506/c/1)]. Should a conflict arise in mediation, the mediator will recuse themselves and the Coordinator of Mediation will assign a different, randomly selected mediator to the case. If a mediation participant has concerns about a potential conflict, they should contact the Coordinator of Mediation to discuss their concern. The Coordinator will investigate the concern and make a determination as to whether the assigned mediator may continue as mediator for the case or whether an alternate mediator need be assigned. Additionally, if a party does not want to work with the mediator assigned to their region, they can reach out to the Coordinator and the coordinator will assign an alternate, randomly selected mediator.

TECHNICAL ASSISTANCE

The Coordinator and the Mediators provide technical assistance to enable stakeholders to better and more fully understand the mediation process, how to request mediation, how parties can prepare for their participation, and to answer any questions mediation participants may have, including how it compares with other dispute resolution processes.



MEDIATOR CONTACTS

**Coordinator of Mediation**

Myrto Flessas 857-260-4541 [myrto.flessas@mass.gov](mailto:myrto.flessas@mass.gov)

**Western and Central MA**

Archie Archibald 857-294-0162 [steven.archibald@mass.gov](mailto:steven.archibald@mass.gov)

**South Central MA and South Metro Boston**

Steve Lilly-Weber 781-572-2644  [steven.lilly-weber@mass.gov](mailto:steven.lilly-weber@mass.gov)

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Beth Ross  617-997-2343  [beth.ross@mass.gov](mailto:beth.ross@mass.gov)

Please reach out to Myrto Flessas, BSEA Coordinator of Mediation and Facilitation (857-260-4541; [Myrto.flessas@mass.gov](mailto:Myrto.flessas@mass.gov)) if you have any questions about your assigned mediator or if you would like to have an alternate mediator assigned to your case.

**ACCESSING MEDIATION**

Stakeholders can easily locate information on the mediation process on the mass.gov website at <https://www.mass.gov/mediation-at-the-bsea>. In addition, the BSEA provides information to families through:

* [PARENT’S NOTICE OF PROCEDURAL SAFEGUARDS](https://www.doe.mass.edu/sped/prb/)
  + Information regarding the availability of mediation as a dispute resolution option is included in the Massachusetts’ Procedural Safeguards Notice. This notice is provided to all parents of students involved in special education or 504 accommodations from their LEAs and also by the BSEA if a due process hearing is requested.
* IEP Rejection/Non-response Packet: BSEA Dispute Resolution Options
  + The BSEA is notified of all fully rejected, partially rejected, and non-responded to IEPs.
  + The BSEA sends out an annual reminder to school district with the list of the information they are required to provide to the BSEA when an IEP is fully or partially rejected or when an IEP has not been responded to.
  + Once the BSEA receives this information from districts, it sends an informational packet to families that includes information and brochures about:
    - Mediation,
    - Due Process Hearing,
    - Legal and Advocacy Agencies that may be able to provide free or low-cost representation,
    - Massachusetts’ [SpedEx Program](https://spedex.squarespace.com/).
  + Annually, the BSEA sends out Due Process Informational packets to over ten thousand parents.
* Robust outreach by the Coordinator and mediators, please see the “Outreach” section below.

WHEN TO USE MEDIATION

The mediation process offers an opportunity for parents, adult students, and public school districts and state agencies to resolve special education or 504 accommodation disputes about any matter under [34 CFR § 300](https://sites.ed.gov/idea/statute-chapter-33), [603 CMR § 28](https://www.doe.mass.edu/lawsregs/603cmr28.html?section=08), and [§504 of the 1973 Rehabilitation Act](https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973), including matters arising prior to the filing of a due process complaint. This includes matters regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to a child with a disability, as well as any other matters arising under 34 CFR part 300 and 603 CMR § 28 that may or may not be the subject of a due process complaint. Parties are not required to file a due process complaint in order to access mediation.

Examples of issues that may be mediated include, but are not limited to:

* FAPE
* Eligibility
* Evaluation
* IEP Accommodations/Modifications
* IEP Goals
* IEP Service Delivery Grid
* IEP Other
* LRE/Placement
* Extended School Year
* Transition Programming
* Compensatory services
* Transportation
* 504 Accommodation Plans
* In lieu of a BSEA Due Process Hearing Resolution Session
* Early Intervention programming disagreements

The parties may voluntarily engage in mediation to resolve a BSEA due process hearing that has already been filed or a pending PRS complaint. Parties may access mediation even if there is no pending due process hearing or PRS complaint[[3]](#footnote-3). Issues that are the subject of voluntary mediation are agreed upon between the parties to the mediation.

Please reach out to the Mediator who covers your region or to the Coordinator of Mediation with questions about what can be mediated.

WHEN MEDIATION MAY NOT BE USED

Mediation may not 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 [34 CFR §§[300.506(b)(1)](https://sites.ed.gov/idea/regs/b/e/300.506/b/1) and [(8)](https://sites.ed.gov/idea/regs/b/e/300.506/b/8)]. <https://sites.ed.gov/idea/regs/b/e/300.506/b/8>. BSEA Mediation may not be used to mediate general education disputes.

The Part B regulations prohibit a public agency from using mediation to seek to override:

* a parent’s or an adult student’s failure to respond to a request for, or refusal to consent to, the initial provision of special education and related services [34 CFR §[300.300(b)(3)(i)](https://sites.ed.gov/idea/regs/b/d/300.300/b/3)],
* a parent’s or adult student’s revocation of consent for the continued provision of special education and related services to his or her child [34 CFR §[300.300(b)(4)(ii)](https://sites.ed.gov/idea/regs/b/d/300.300/b/4)], or
* a parent’s or adult student’s refusal to consent, or failure to respond to a request to provide consent to an initial evaluation or re-evaluation of a child who is home schooled or parentally-placed in a private school at parental expense [34 CFR §[300.300(d)(4)(i)](https://sites.ed.gov/idea/regs/b/d/300.300/d/4/i) and 34 CFR §[300.520](https://sites.ed.gov/idea/regs/b/e/300.520)] .

Mediation, pursuant to 34 CFR §[300.506(a)](https://sites.ed.gov/idea/regs/b/e/300.506/a), may be used to resolve any disputes under Parts B of the IDEA and its implementing regulations before a parent revokes consent for the continued provision of special education and related services. However, for the same reasons that mediation is not allowed when a parent refuses to provide initial consent for services (i.e., to ensure that the parent’s right to refuse consent for their child’s receipt of special education and related services is meaningful), mediation is not appropriate once a parent revokes consent for the provision of special education and related services [[73 Federal Register, December 1, 2008, pg. 73016](https://sites.ed.gov/idea/files/20081201-Part_B_supplemental.pdf)].

If a parent refuses to consent to an initial evaluation or re-evaluation of their child who is enrolled in a public school or is seeking to be enrolled in a public school, or if a parent of such a child fails to respond to a request to provide consent to an initial evaluation, the public agency may seek to engage in mediation with the parent if it believes that the child would benefit from the evaluation or re-evaluation.

Mediation is not a team meeting and will not take the place of a team meeting. When teams meet, it is to conduct team business, for example, to review evaluations, conduct an annual review meeting, etc. When parties meet in mediation, it is to work collaboratively with the help of a mediator to resolve specific issues and to enter into a written binding settlement agreement on those issues. For example, a team would not use mediation to review a new evaluation. If a new evaluation has been completed, the team must meet to review the evaluation and discuss whether any changes to the IEP are required. If there is no agreement after the team meeting, the parties may voluntarily elect to participate in mediation to resolve their disagreement.



**EARLY INTERVENTION MEDIATION**



* M.G.L. ch. 233, § 23C; 34 CFR § 303.431 (<https://sites.ed.gov/idea/regs/c/e/303.431>)
* Request for Mediation is made by Parent[[4]](#footnote-4) or Early Intervention Service Program (“EISP”) to Department of Public Health (“DPH”)/Early Intervention (“EI”) Procedural Safeguards Coordinator (“PSC”). ([Requesting Early Intervention Mediation | Mass.gov](https://www.mass.gov/guides/requesting-early-intervention-mediation))
  + Mary Dennehy-Colorusso (978-851-7261 ext. 4016; [mary.dennehy-colorusso@mass.gov](mailto:mary.dennehy-colorusso@mass.gov))
* Parent/EISP requests mediation by contacting the PSC. Requests for mediation may be made by phone, email, submission of letter or by completing a mediation request form: <https://www.mass.gov/doc/early-intervention-mediation-request-form-english/download>
* PSC completes intake with requesting party.
* PSC passes mediation request to responding party.
* If both parties agree to mediate, PSC passes request information to BSEA Coordinator of Mediation (“Coordinator”).
  + Myrto Flessas (857-260-4541; [Myrto.flessas@mass.gov](mailto:Myrto.flessas@mass.gov))
* Coordinator consults with BSEA Mediators and determines who has a mediation date available within the target timeframe of 14 days of the request, ensuring the assignment of a randomly selected mediator.
* Once the BSEA mediator is assigned to the case, the mediation will follow the standard mediation intake and mediation process. See below.
* At the conclusion of the mediation, the mediator will notify the PSC as to whether the mediation occurred and whether a mediated agreement was reached or not reached.



**MEDIATING WITH THE BSEA**

REQUESTING A MEDIATION

A request for mediation is made directly to the BSEA Mediator who covers a particular region. See contact information (p. 9) (Link) If you would like to request an alternate mediator be assigned to your case, please reach out to the Coordinator of Mediation.

To request mediation, you can either **CALL** or **EMAIL** the mediator who covers your region or the Coordinator of Mediation.

\*\*\*If you need an interpreter for your conversation, please notify the mediator and they will add an interpreter to the phone call or have the email translated into your preferred language.\*\*\*

After your call or email, your assigned BSEA Mediator will reach out to you within two (2) business days to follow up on your request. The mediator will explain the mediation process, including the *voluntariness* and *confidentiality* of mediation along with the parties’ intent to enter into a *written settlement agreement*.

Who May Request a Mediation?:

|  |  |
| --- | --- |
| Student | School District |
| * Adult Student who is 18 years old or older * Parent of Student who is under 18 years old * Guardian of Student * Education Surrogate for the Student * Advocate on behalf of the Student/Family (with permission) * Attorney on behalf of the Student/Family (with permission) | * School District Special Education Director * School District Mediation Representative * School District Attorney on behalf of the School District (with permission) * School District Superintendent |

Helpful Information to Share with the Mediator

* Your name and your role
* Student Name
* Student age/grade/school
* School District
* Name of Special Education Director
* Parent/Guardian/Ed Surrogate Name
  + Phone
  + Email
* Who has legal decision making for Student?
* Are Parents married? How is decision making split between unmarried parents?
* Who are you planning to bring with you to mediation?

Each party chooses who they will bring with them to mediation. While many parties represent themselves at mediation, parties are permitted bring a support person(s). Please let us know who you plan to bring (for example:  Family Support Person, Service Provider, Advocate, Attorney, Other). We collect this information to ensure that we know who is involved in the Student’s case.

* Are you planning to bring an attorney to mediation?

Most parties elect to attend mediation without an attorney; however parties are permitted to bring attorneys to mediation. If one party brings an attorney to mediation, the other party must be notified in advance of the mediation to give them an opportunity to also bring an attorney to mediation, if they so choose.

* What are you looking to discuss and resolve in mediation (brief outline, typically 2-3 sentences)?

Examples of issues may include: Eligibility, Evaluation, IEP Accommodations/Modifications, IEP Goals, IEP Service Delivery Grid, Other IEP issues, Placement, Extended School Year, Transition Programming, Compensatory services, Transportation, 504 Accommodation Plan, etc.). Your mediator can help you think through and clarify the issues you are looking to mediate.

* Is there a current BSEA Hearing?
* Is there a current DESE Problem Resolution System (PRS) Complaint?
* Does the family need interpretation services? Which Language:
* Does the family need other accommodations?
* DO NOT: Send the mediator documents prior to the mediation.
* DO NOT: Include the mediator on email communication between family and school.

Once A Request Has Been Received By The Mediator:

* + The mediator will discuss with the parties, especially the parents, what to expect and how to prepare for the mediation.
  + The mediator will pass the mediation request on to the other party to the dispute.
  + As mediation is a voluntary process, the mediator will work with the other party to determine whether it is open to using mediation to resolve the dispute.
  + If the other party agrees to mediate, the mediator will email the Agreement to Mediate form email which will need to be email signed and returned in order to proceed. If a party does not have access to email or requires any accommodation to receive and return the form, the mediator will work with the party to provide the needed accommodation. Once both parties have returned the Agreement to Mediate form email to the mediator, the mediator will schedule the mediation in collaboration with the parties. Mediation dates are set with consideration to the family’s availability, the School District’s availability, and the mediator’s availability. Mediation will be scheduled as quickly as possible.

* + If the other party does not want to mediate, it should let the mediator know. Again, as mediation is voluntary, no one is required to participate. The Mediator must have a response to the request for mediation within 30 days in order to either schedule or close the request. If a party does not respond to a mediation request within 30 days of receiving the request for mediation by the mediator, the mediator will close the mediation request and will construe the request as declined.
  + Parties may voluntarily agree to mediate some issues but decline to mediate others. The mediator will work with the parties to determine if they volunteer to proceed to mediation on the limited issues.
  + If a party is not sure if they would like to proceed to mediation, they should let the mediator know and they can schedule a time to further discuss how mediation might be helpful in the situation and what other options may exist to address the dispute.
  + Once the mediator has a response from the non-requesting party, the mediator will reach out to the party that made the request for mediation and inform them of the response to their request.
    - If the other party has declined to mediate, the mediator will discuss other options that may exists for resolving the dispute.
    - If the other party has agreed to mediate, the mediator will work with the parties to schedule a mediation.

THE AGREEMENT TO MEDIATE FORM (Email)

As discussed above, once both parties have agreed to mediate, the mediator will send an email, see below, with the following Agreement to Mediate form and directions. The parties to the mediation must complete the form and return it directly to the mediator in order to proceed with mediation.

The parties must also forward the form to all guest participants they plan to invite to the mediation; these additional mediation participants must complete the form and return it directly to the mediator prior to the mediation. Parties may not email sign the form on behalf of anyone other than their own minor child if that child plans to attend the mediation.

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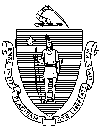
\*\* Please complete and email return this form to me ASAP. Also, forward this form to anyone who will be attending the Mediation and ask that they complete and return it directly to the Mediator via email.

**Each mediation attendee must individually complete this email form** **and return it directly to their mediator from their own individual email address.** Mediation will not be scheduled until this form is completed and received by the Mediator.

**There is no hyperlink, you will input your information in a reply email directly to the Mediator.**

DIRECTIONS:

1. Reply to this email,
2. Scroll Down to the BOLD/BLACK portion,
3. Put your cursor after each section and enter your information,
4. Send your email back directly to the Mediator.

 **THE COMMONWEALTH OF MASSACHUSETTS**

**Division of Administrative Law Appeals**

**Bureau of Special Education Appeals**

State of Massachusetts Crest

Mediator Name, Mediator

        14 Summer St., Malden, MA 02148

        Telephone: ###-###-#### Email: [first.last@mass.gov](mailto:first.last@mass.gov)

**AGREEMENT TO MEDIATE**

Student:

Parents/Guardians:

District:

The Student, Parents/Guardians, and the School District (“the Parties”) to the dispute and their invited attendees (hereinafter collectively referred to as “the Participants”), whose email signatures appear below, agree to have a Bureau of Special Education Appeals Mediator (“Mediator”) mediate the dispute subject to 603 CMR 28.08(4); *M.G.L.* ch. 233, § 23C; and 34 CFR § 300.506 with the following acknowledgments:

**Nature of Mediation**

The Participants understand that mediation is a voluntary settlement process in which a neutral and impartial Mediator assists the Parties to negotiate a written agreement resolving some or all of the dispute in a collaborative manner. The Participants understand that the mediator will work impartially on behalf of all Parties to support them in reaching a written settlement. The Participants understand that the Mediator has no authority to decide any case and is not acting as representative, advocate, or legal advisor for any party.

**Mediation is Voluntary**

The Parties here state their good faith intention to complete their mediation by generating a binding, written mediated agreement. It is, however, understood that any Party may withdraw from or suspend the mediation process at any time, for any reason, up until a mediated agreement is signed.

**Mediation is Confidential**

Mediation is a confidential process (*M.G.L.* ch. 233, § 23C; 34 CFR § 300.506). Mediation discussions, any draft resolutions, and any unsigned mediated agreements are confidential, cannot be shared with parties who were not present during the mediation, and are not admissible in any court or other contested proceeding. You *may* share mediation conversations with your attorney. The Participants agree not to call the mediator to testify concerning the mediation or to provide any materials from the mediation in future or pending litigation.

The Participants agree that they will not stream, video-record, audio-record, or photograph the mediation or mediation materials. It is illegal in Massachusetts to record another person unless you first obtain their consent to do so (M.G.L. Ch. 272, § 99(C)).  In the event that the mediation occurs on an internet or telephone-based platform, the Participants agree to divulge to the Mediator all individuals who are participating in and are present for the mediation.

To affirm your acceptance of this **Agreement to Mediate**, please fill in the following information and email the response as a reply to this email directly to the Mediator. This agreement will extend to any potential second sessions of this Mediation.

**Name (e-signature):** /s/

**Role/position:**

**Address:**

**Signature Date:**

If you are the Parent/Guardian of the Student and 1.) the Student will be attending the BSEA Mediation AND 2.) the Student is under 18 years old, under your guardianship, or you have Durable Power of Attorney for the Student, please affirm the Student’s acceptance of this **Agreement to Mediate** on their behalf. This agreement will extend to any potential second sessions of this Mediation.

**Student Name:**

**Parent/Guardian/Legal Signatory Name (e-signature):** /s/

**Role/position:**

**Address:**

**Signature Date:**

**If the Student is 18 years old or older and will attend the Mediation on their own behalf, they must complete and return this form directly to the Mediator’s email address from their own email address.**

By replying to this email with the requested information you are agreeing to mediate with the terms of mediation participation listed above.

Once this email form has been completed and returned to the Mediator, the Mediator will work collaboratively with the Parties to schedule a mutually agreed upon date for the mediation. Mediation will be scheduled with consideration of the Participants’ and the Mediator’s availability.

Thank you,

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Please reach out to your mediator with questions or if you need the form translated. Additionally, if a parent or student does not have access to a computer or email address, the mediator will arrange for the form to be supplied to the family at the student’s school or at the district’s administrative office to be read and signed in person.

SCHEDULING MEDIATION

The BSEA conducts mediations year-round. The BSEA does not have an expedited or emergency mediation option, however, the BSEA makes best efforts to schedule mediations as quickly as possible. In an effort to provide greater accessibility to the process, the BSEA provides mediation either virtually or in person. Currently, approximately, 80% of BSEA mediations occur on a videoconferencing platform (Zoom) and 20% occur in person.

The mediator assigned to your region will work with both parties to determine the date, time, and location of the mediation. Mediation dates are set with consideration to the family’s availability, the School District’s availability, and the BSEA Mediator’s availability. Parties may ask the Coordinator of Mediation or their assigned mediator to check with colleagues about sooner availability.

The BSEA reviews mediator caseloads to ensure that they are equitable and that wait times for mediations are balanced across regions. In the event that a mediator’s caseload is not well balanced, cases will be internally reallocated. If the overall caseloads are unbalanced, the BSEA will adjust mediators’ regional zones. This data is collected weekly from the mediators by the data coordinator. Additionally, regional assignments of mediators are analyzed on an annual basis to ensure regional caseload balance and equity in mediation scheduling timeframes.

The IDEA provides that each mediation session be held in a location that is convenient to the parties to the dispute [34 CFR §[300.506(b)(5)](https://sites.ed.gov/idea/regs/b/e/300.506/b/5)]. When held in person, this is typically in two accessible, private, and confidential rooms in the town or city that student resides or where the school is located. If the parties are comfortable with the location of the mediation session, it is more likely that they will work cooperatively to achieve a resolution of their dispute. Often, the mediation is held via remote platform for the parties’ convenience.

The length of the mediation process depends on multiple factors, including the type and complexity of issues presented, the availability of the parties, and the willingness of the parties to collaborate. Also, the length of the mediation process will depend on the individual techniques used by the mediator. Typically, parties should set plan to set aside 2 – 4 hours for mediation.

Occasionally, a mediation may require a second session to complete the work of the parties. This second session would be scheduled with the mediator. Based upon the terms of the mediated agreement reached between the parties, if a follow up mediation is agreed to, the parties will schedule this mediation with the mediator as well.

While the IDEA does not specifically address the timing of the mediation process, mediation is intended to facilitate prompt resolution of disputes between parents and public agencies at the local level and decrease the use of more costly and divisive due process proceedings and civil litigation [[64 Federal Register, March 12, 1999,](https://www.govinfo.gov/content/pkg/FR-1999-03-12/pdf/99-5754.pdf) pg. 12611]. Therefore, the BSEA’s mediation procedures ensure that: (1) the mediation process is not 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; and (2) each session in the mediation process is scheduled in a timely manner  [34 CFR §§[300.506(b)(1)(ii)](https://sites.ed.gov/idea/regs/b/e/300.506/b/1) and [(5)](https://sites.ed.gov/idea/regs/b/e/300.506/b/5)].

Parties may access mediation even if there is no pending due process hearing or PRS complaint. However, if there is a pending hearing, unless the parties agree to an extension, the use of mediation may not affect the 30-day resolution period timeline or the 45-day due process hearing timeline established in §§[300.510](https://sites.ed.gov/idea/regs/b/e/300.510) and [300.515](https://sites.ed.gov/idea/regs/b/e/300.515) (Note: Only a hearing officer can extend the 45-day timeline based on a request from a party or parties). Likewise, the use of mediation may not affect the 60-day State complaint timeline established in §[300.152(a)](https://sites.ed.gov/idea/regs/b/b/300.152/a) unless the parties agree to an extension [34 CFR §[300.152(b)(1)(ii)](https://sites.ed.gov/idea/regs/b/b/300.152/b)].

Interpreters are provided by the BSEA, free of charge to the parties; please make sure to notify the mediator if one is needed to allow enough time for scheduling. Additionally, the mediator will work with the parties to provide any needed accommodations for accessing mediation. Please let the mediator know if you require any accommodations to access the mediation process.

***Families and school district are encouraged to continue to work together while they wait for their scheduled mediation. If the parties resolve the issues prior to mediation, they can notify the mediator that the issues have been resolved and cancel the mediation.***



PREPARING FOR MEDIATION

Preparing for mediation will make the process more efficient and effective and reduce stress in the mediation.

Make sure:

* You have a quiet confidential space .
* You have set aside 2-4 hours for the process .
* You have snacks and hydration for the duration of the mediation.

Prior to mediation consider:

* What do I want from mediation? Don’t just identify the problem, be prepared to find solutions.
* Who do I need to have with me in order to enter into a mediated agreement?
* What documents have been helpful to me in thinking about the student’s special education programming and what I am looking for in mediation?

You can also consider:

* What is important to me? Why?
* What might be important to the other party? Why?
* What options might meet my interests?
* What options might meet the other party’s interests?
* What might be some alternatives if we can’t agree on all the issues?
* What happens if we do not agree at mediation?

What might resolution look like?

* Aspire to: The resolution satisfies my interests and might meet enough of the other party’s basic concerns that there is at least a possibility they would agree?
* Content with: The resolution might not be perfect, but it would still satisfy my basic interests so that I can be reasonably content.
* Live with: I can live with the resolution, it may not be perfect or everything I want, but it is better than not agreeing.  Examples of each of these categories?

Shift to a Mediation Mindset:

* Be prepared to solve the problem, not just identify it.
* Remember this is a collaborative process designed to move the situation forward, be prepared to be flexible.
* The focus of mediation is what can happen in the future, not on what did or did not happen in the past – what do you want to have happen going forward?
* Be prepared to listen and learn new options and ideas.
* Be prepared to prioritize and to let some things go in order to move forward.
* It is more likely that an agreement will be reached if the parties are focused on a resolution that works for all parties.
* Focus on the issue, not the person.
* Practice progress, not perfection.



PARENT CHECK LIST

Request/Setting-Up Mediation

* Did I either email or call the mediator directly to make my mediation request?
* Have I asked the mediator my questions?
* Have I given the mediator the relevant and pertinent information?
* Are we ready for mediation? Does the school know about the disagreement?

Preparation (Advocate/Parent)

* Do I want to accept or decline the Mediation Request?
* Can I go to mediation in good faith?
  + Do I want to work collaboratively with the school to resolve the dispute through mediation? Then yes!
  + Do I want to have a determination about who is wrong or right? Perhaps mediation is not the next step.
* Am I willing to be flexible?
* What are the issues that I want to resolve?
* Are there issues that I do not want to address in mediation? Have I told the mediator?
* Have I considered the strengths and/or areas of vulnerability in my case?
* Have we confirmed the date/time/location for mediation?
* Did I set aside 2-4 hours for the mediation?
* Who do I need at the mediation in order to make a decision?
* Do I understand the “mediation mindset”?
* Have I considered what compromise might look like?
* Have I considered my own emotions when preparing for mediation?
* Have I considered the flexibility of a Mediated Agreement (settlement, separate from IEP, revising/amending IEP)?
* Have I considered what I would like to share in the joint session and what I want to save for private session?
* Have I developed a clear, concrete, concise list of what my wish list is for mediation?
* Do I want to review this case with an attorney or advocate before being open to settlement through mediation? If yes, have I provided the mediator with ample notice?
* Do I want my attorney present at the mediation?
* Is there particular language I want in the Mediated Agreement?

Post Mediation

* Did I electronically sign the mediated agreement if it was a virtual mediation?
* Did I get a copy of the Mediated Agreement?
* Do I understand my obligations under the Mediated Agreement?
* Do I understand the confidentiality of the mediation process and any confidentiality language in the mediated agreement?
* Is the status of the IEP clear? Do I have questions about “stay put”?
* If an agreement was not reached, what are my next steps?
* Do we need a follow-up mediation?
* Do we want to use the BSEA Facilitated Team Meeting process?

DISTRICT CHECK LIST

Request/Setting-Up Mediation

* I either emailed or called the mediator directly to make the mediation request?
* Have I given the mediator the relevant and pertinent information?
* Have we held all Team Meetings necessary before mediating?
* Does the Parent know we are requesting mediation?

Preparation (Director)

* Does the District want to Accept or Decline the Mediation Request?
* Did I respond to mediator in a timely manner?
* Am I coming to mediation in good faith?
* Am I willing to be flexible?
* What are the issues that I want to resolve?
* Are there issues that I do not want to address in mediation?
* What are the strengths and/or areas of vulnerability in this case?
* Have we confirmed the date/time/location for mediation?
* Did I set aside 2-4 hours for the mediation?
* Do we have two confidential spaces reserved for the mediation?

Preparation (Staff)

* + Who do I need at the mediation in order to make a decision?
  + Have I notified all staff who I need to be present?
  + Have I explained the “mediation mindset” to my staff?
  + Did I let School Team Members know that they can continue working with the family while we wait for the mediation?
  + Have the staff and I considered what compromise might look like?  Have we considered alternate or creative ways to resolve?
  + Have I worked with any potentially defensive or emotional staff about utilizing mediation?
  + Have I talked with staff about the flexibility of a Mediation Agreement (settlement, separate from IEP, revising/amending IEP)?
  + Have we discussed what the District would like to share in the joint session and what we would like to save for caucus?

Preparation (Attorney)

* Do I need to review this case with our attorney?
* Do I want our attorney present at the mediation?
* Is there particular language I want in my mediated agreement?
* If our attorney will be present, have I given the mediator ample notice?

Post Mediation

* Did I electronically sign the mediated agreement if it was a virtual mediation?
* Have I notified relevant staff about the agreement?
* Have I given copies of the agreement to everyone who needs a copy?
* Is the agreement stored in the appropriate location?
* Have I assigned staff specific tasks to ensure all components of the agreement are followed?
* Are we abiding by the timelines we established in mediation?
* Have I reviewed any confidentiality language with staff to ensure their understanding?
* Is the status of the IEP clear? Do I have questions about “stay put”?
* If we did not reach an agreement, what is our next step?
* Do we need a follow-up mediation?
* Do we want to use the BSEA Facilitated Team Meeting process?

PARTIES TO MEDIATION

“Parties” to mediation are the legal decision maker for the student, often the parents of a child with a disability as defined in §[300.30](https://sites.ed.gov/idea/regs/b/a/300.30) and/or the adult student, *AND* a school district (LEA) representative with settlement authority on behalf of the LEA, or as appropriate, a State agency in accordance with §[300.228](https://sites.ed.gov/idea/regs/b/c/300.228), or other public agencies that have responsibility for the education of children with disabilities [34 CFR §[300.506](https://sites.ed.gov/idea/regs/b/e/300.506)]. Unlike State complaints, which can be filed by any organization or individual, IDEA Mediation must be made available only to parents, adult students, and public educational agencies to resolve disputes involving any matter under 34 CFR part 300, including matters arising prior to the filing of a due process complaint.

Under §[300.33](https://sites.ed.gov/idea/regs/b/a/300.33), the term “public agency” includes DESE, LEAs, educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs and ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. The school district or public agency representative present at the mediation must have the authority to commit the LEA to any decision made.

Beyond the required parties to mediation, each party decides about optional participants, i.e. who else they will bring to mediation. Because mediation is voluntary on the part of the parties, either party has the right not to participate for any reason, including if a party objects to someone the other party wishes to bring to the mediation session. This could include a party’s objection to the attendance of an attorney representing either the parent or the public agency. For example, if the parent wishes to bring an attorney to the mediation session and the LEA objects, the parent may choose not to participate. Because the purpose of mediation is to reach a mutually agreeable resolution and to enter into a written, binding agreement at mediation, parties must bring with them whoever they require in order to enter into such an agreement at the mediation session.

If the required parties are not present for the mediation session, the mediation will not go forward.

|  |  |
| --- | --- |
| **Required Parties** | **Optional Participant Examples** |
| * + Legal Decision Maker for the Student (this may be the Parent, Guardian, Educational Surrogate **and/or** a Student (18+ years old)).   **AND**   * + School District representative with settlement authority **OR**   + Early Intervention service provider representative with legal settlement authority. | * Student * Family support person * Advocate * Outside service providers * Therapist * Independent evaluator * Insurance-based home service providers * School Team Members * School-based consultants * Private Special Education School staff * Collaborative school staff * Attorney * DDS case worker  DMH case worker * DCF case worker |

STUDENTS AT MEDIATION

Parent(s) may choose to have their child present for all or part of the mediation session. The age and maturity of the child should be considered in determining the appropriateness of including the child in the mediation with their parent.  Parents are encouraged to discuss student participation with the mediator.

For Students who are 18 years old or older:

Parents or guardians are asked to provide the mediator with the student’s contact information so that the mediator may discuss the student’s participation in mediation directly with them. Parents are welcome to be a part of the conversation as well. The mediator will provide the parent and student with information about BSEA Mediation participation for students who are 18 years old or older, so the student understands their options. The mediator will need to know the student’s choice for decision-making at mediation and the district and mediator will need to receive any necessary paperwork related to legal decision-making prior to the mediation.

An 18+ year old Student’s options are to:

1. **Attend** the entirety of the BSEA Mediation and sign any agreement reached on their own behalf. This includes any student who has full or shared educational decision-making authority.
2. Not attend the BSEA Mediation. The Student has a **Court Appointed Legal Guardian**. The Student’s Legal Guardian shall provide a copy of the guardianship documentation to the BSEA Mediator and to the Student’s School District prior to the mediation. The Student’s Guardian will attend the BSEA Mediation and sign any agreement reached on the Student’s behalf. The Student may attend any portion of the mediation.
3. Not attend the BSEA Mediation.  The Student has executed a duly witnessed **Age of Majority Form** with the Public School District vesting *all decision-making authority* in another person. The person identified in as the decision maker in the Age of Majority form, typically a parent, will attend the mediation and sign any agreement reached on the Student’s behalf. The Student may attend any portion of the mediation.
4. Not attend the BSEA Mediation. The Student will present the District and the BSEA a copy of a duly executed **Power of Attorney**. The person identified as the decision maker in the Power of Attorneydocument will attend the mediation and sign any agreement reached on the Student’s behalf. The Student may attend any portion of the mediation.

Parents should provide the mediator with the student’s contact information and let the student know that the mediator will be reaching out to speak with them about these options. It can be helpful if the parent discusses and explains the options to the student prior to the mediator speaking with them. Please note that if the student chooses option #3 or #4 listed above, documentation must be completed and provided to the mediator and district prior to mediation.

The mediator is available to answer any questions you may have about student participation in mediation.

ATTORNEYS AT MEDIATION

While most parties do not choose to do so, parties are permitted to have their attorneys attend the mediation session. Successful mediation requires that parties understand and feel satisfied with the development and signing of a mediated agreement. Mediated Agreements are signed at the conclusion of the mediation session; if a party wants their attorney to review any Mediated Agreement before signing the agreement, they should plan to have their attorney attend the mediation. Please notify the mediator that you plan on bringing your attorney when you make the request, if possible, so that the mediator can allow the other party to have the option to bring an attorney as well.



THE MEDIATION

Zoom or In Person:

* Zoom: a central zoom room will be established along with private, confidential breakout rooms for the parties to use during mediation.
* In Person: a location, typically in a district building where the student attends school, will be identified. Two rooms will be established. These rooms must be private and confidential spaces. Both parties and the mediator will meet initially in one room, then each party will move to their own private, confidential spaces.

Introduction

* The mediator will lead introductions, lay ground rules for conduct, and outline the process and time frame for the day’s mediation.
* The parties typically begin the mediation together in once space; however, depending on the desires of the parties, they may begin the mediation in breakout rooms.
* The mediator will describe the voluntariness and confidentiality of mediation and give participants an opportunity to ask clarifying questions.

Joint session

* The mediator will ask the requesting party to let the group know what they are looking to resolve in mediation. This is not a time for an extensive history, this is a time for identifying the issues that will be addressed during the mediation and the desired outcome.
* The mediator will ask the other party to also share what they are looking to resolve in mediation.
* The mediator will restate and clarify the parties’ statements.
* It is most helpful to the mediation process if parties have considered their priorities and desired outcomes prior to the start of the mediation.

Private sessions

* The parties will be moved to private, confidential sessions.
* The majority of the mediation will occur in the private sessions, meaning that the parties will be talking directly to the mediator but not to each other.
* This will be an opportunity to share the background and history of what brought the parties to mediation.
* The mediator will employ mediation strategies and skills to bring the parties to resolution on the issues.

Developing the agreement

* The mediator will move back and forth between the private sessions working with the parties to narrow down the areas of disagreement and clarify and expand the areas of agreement.

Writing the agreement

* The mediator will write the terms of the agreement between the parties in a Mediated Agreement settlement document.
* The mediator and the parties will review the Mediated Agreement to ensure comprehension and accuracy.
* The mediator will review the confidentiality of the mediation process.

Signing the agreement

* Mediated agreements are signed at mediation.
* If in person, the mediator will print the mediated agreement and the parties will sign the agreement at the conclusion of the mediation session.
* If on Zoom, the mediator will send the agreement to be signed by the parties through an electronic signature program by the end of the day of the mediation session.

After mediation

* The signed mediated agreement is a legally binding agreement between the parties and must be implemented as written.
* If either party has a question or any circumstance has changed, the parties are welcome to reach out to the mediator. Although the mediator does not enforce the mediated agreement, the mediator will review the parties’ options for enforcing compliance in state or federal court or, if agreeable to both parties, the parties may return to mediation to revise the agreement.



EMOTIONS AT MEDIATION

* Conflict can be stressful and participants may feel anxious, fearful, insulted, angry, or dysregulated.
* BSEA Mediators understand that participating in mediation may bring up difficult emotions and they will work with participants with dignity and compassion to help them reach a mutually agreeable resolution and an opportunity to move forward.
* Likewise, mediation participants are expected to engage in the mediation process with good faith and to treat the mediators respectfully and courteously.

**MEDIATED AGREEMENTS**

Settlement reached through mediation

The goal of mediation is to resolve the dispute by executing an enforceable, legally binding written agreement reflecting that resolution.

* + The terms of the mediated agreement will be reached through discussion during the mediation process.
  + The mediator will work with the parties during the mediation to narrow points of agreement in order to resolve some or all of the issues in dispute.
  + The mediator will write the terms of agreement reached between the parties into a Mediated Agreement.
  + Parties may discuss many issues during mediation, but only the terms that are listed in a fully executed (signed) legally binding mediated agreement have been agreed to and are enforceable.
  + The mediated agreement will state that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in state or federal court.

Mediation is voluntary; the parties will only sign a mediated agreement if they agree to its terms. The mediated agreement is binding once both parties have signed it. As mediation is voluntary, the parties will only sign a mediated agreement if they agree to its terms. There is no repercussion for not entering into a mediated agreement during mediation; if no agreement is reached at mediation on some or all of the issues, the parties retain their ability to file a complaint with PRS or request a due process hearing with the BSEA.

Mediated agreements are signed at the conclusion of the mediation session. If the mediation occurred in person, the parties will sign the agreement in person at the mediation table. If mediation occurred over Zoom, the mediator will send the agreement through an electronic signature platform to be signed by the parties by the end of the day of the mediation session.

A mediated agreement must be signed by both the parent and/or adult student and a representative of the public agency who has the authority to bind the agency [34 CFR §[300.506(b)(6)](https://sites.ed.gov/idea/regs/b/e/300.506/b/6)]. It is important that the parties understand that, once signed, the mediated agreement is legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States [34 CFR §§[300.506(b)(7)](https://sites.ed.gov/idea/regs/b/e/300.506/b/7) and [300.537](https://sites.ed.gov/idea/regs/b/e/300.537)]. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding written agreement that sets forth that resolution and states that all discussions that occurred *during* the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in state or federal court.

Please note, while discussions that occur during the mediation process must be confidential, neither the IDEA nor its implementing regulations specifically address whether the mediated agreement itself must remain confidential. However, the confidentiality of information provisions in the Part B regulations in 34 CFR §§[300.611 through 300.626](https://sites.ed.gov/idea/regs/b/f) and the Family Educational Rights and Privacy Act (FERPA), and its implementing regulations in 34 CFR part 99 would apply. Further, there is nothing in the IDEA or its implementing regulations that would prohibit the parties from agreeing voluntarily to include in their mediation agreement a provision that limits disclosure of the mediation agreement in whole or in part to third parties. Also, there is nothing in the IDEA that would prohibit the parties from agreeing to permit the agreement to be released to the public.

If there are issues that were not addressed by the mediated agreement, the parent may file a complaint with PRS or file a BSEA due process hearing request to seek to resolve those issues.

Failure to Implement a Mediated Agreement

Once both parties have signed the mediated agreement, the parties are legally bound by that agreement, and a parent cannot seek to change the terms of that agreement by filing a PRS complaint or requesting a due process hearing to alter that agreement.  A written, signed mediated agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States [34 CFR §[300.506(b)(7)](https://sites.ed.gov/idea/regs/b/e/300.506/b/7)].

Please note:

* Mediators do not interpret mediated agreement language. However, if agreeable to both parties, the parties may return to mediation to clarify language in the mediated agreement.
* The mediators and coordinator do not enforce mediated agreements; mediators can review the parties’ options for enforcing compliance in state or federal court or, if agreeable to both parties, the parties may return to mediation to revise the agreement.



**MEDIATION: AN ACCESSIBLE PROCESS**

The BSEA takes affirmative steps to ensure that the mediation process is widely promoted, understandable, and accessible for all families and school districts. The BSEA reviews its policies and practices annually in order to monitor and improve families and school districts’ access to mediation.

The BSEA provides an effective and accessible mediation program through its vigorous notification policies; its experienced, full-time mediators; its accessible request and mediation practices; its robust outreach programming; and its convenient technical assistance.

It is critical that all participants have access to special education mediation regardless of their socio-economic status, education, language, disability, race, gender, or membership in any other protected class. The BSEA seeks to ensure meaningful access to information about the mediation process, how to request a mediation, and to ease access to the mediation process itself.

NOTICE

The BSEA provides ample and robust notification to families and school districts about mediation.

* Families, district staff, and all who are involved in special education are encouraged through outreach presentations, the parental due process rights notification packet provided by the LEA, and on the BSEA website to call the Coordinator of Mediation or the Mediator who covers their region with questions and for information.
* The BSEA provides free informational sessions on mediation across the state through public Zoom Presentations, directly to SEPACs, school district staff, parent groups, advocacy groups, other state social services agencies, collaborative and private special education schools, as well as other programs that work to provide support to children with disabilities.
* The BSEA provides information about mediation in brochures and informational flyers included in our Due Process Right Informational Packets for parents. The BSEA is notified of all fully rejected, partially rejected, and non-responded to IEPs, typically receiving over 12,000 notifications from LEAs annually. Once the BSEA receives this information, it sends an informational packet to families that includes information and brochures on:
  + Mediation,
  + Due Process Hearing,
  + Legal and Advocacy Agencies that may be able to provide free or low-cost representation,
  + Massachusetts’ SpedEx Program.
* The BSEA provides information on their [website;](https://www.mass.gov/mediation-at-the-bsea)
* The BSEA provides information through its partnership with the state’s Parent Training Institute, the Federation for Children with Special Needs; and
* BSEA due dispute resolution information is provided in the Parental Rights Brochure outlining parent’s procedural safeguards. Information regarding the availability of mediation as a dispute resolution option is included in the State’s Procedural Safeguards Notice.



ACCESSIBLITY

* To resolve disagreements, parties may access voluntary mediation quickly and easily, without needing to file for a due process hearing.
* Parents and schools communicate directly with the mediator assigned to their case. This ensures direct and swift access to skilled, knowledgeable, experienced mediators who specialize in special education mediation.
* Requests for mediation may be made either verbally or through email. This is aimed at reducing literacy or language barriers.
* Interpretation services are funded and arranged by the BSEA for mediation. Additionally, information and forms are available in any language.
* The BSEA Coordinator and mediators complete DESE’s Language Ambassador Training course which trains individuals who work with interpreters in schools to create a more accessible and meaningful mediation experience for non-English speaking parties.
* The BSEA Coordinator and mediators complete CADRE’s Cultural and Linguistic Competence Assessment for Dispute Resolution Systems.
* Mediators work directly with parties to provide any accommodations required under the ADA for access to mediation process at a party’s request.

HIGHLY SKILLED AND SPECIALIZED MEDIATORS

* BSEA mediators exclusively mediate special education disputes.
* BSEA mediators mediate a high volume of cases each year, using their experience to improve their mediation skills as well as the outcomes of mediation.
* BSEA mediators also facilitate team meetings, staying connected to special education team dynamics and issues.
* Full time mediators provide opportunities for co-mediation, peer review, and team collaboration on topical issues and mediation strategies.
* Direct and frequent contact with the Coordinator provides opportunities for oversight, feedback, and real-time expert consultation.
* Mediation participants work directly with their mediator from the request through the entire mediation process creating reliable and friendly guidance through the mediation process.
* The BSEA holds firmly that it must not only maintain an accessible process but also that the mediators and the Coordinator of the program must be accessible themselves to families and school districts. Thus, in addition to listing the direct mediator contact information in the IEP Rejection/non-response Packet we list our cell phone numbers and email addresses on our website.



OUTREACH

The BSEA is committed to ensuring that the families, school districts, and other state agencies of Massachusetts understand their due process options and how to access them. In an effort to provide as much information to as many stakeholders across the state, the BSEA provides many opportunities to learn about special education mediation.

The Coordinator and mediators offer informational Zoom sessions on BSEA Mediation and Facilitation. Families, Students, Educators, School Staff, Advocates, etc. are welcome to join the hour long Zoom sessions to learn about how mediation at the BSEA works and to ask questions. No RSVP necessary.

The dates and virtual links for the meetings are below:

Tuesday, September 19, 2023

[**12:30pm – 1:30pm BSEA Informational Session**](https://us02web.zoom.us/j/83258638535?pwd=dUk2UUUwemllTDlZUHA1NU9RQWxjUT09)

Thursday, September 21, 2023

[**7:00pm – 8:00pm BSEA Informational Session**](https://us02web.zoom.us/j/83258638535?pwd=dUk2UUUwemllTDlZUHA1NU9RQWxjUT09)

Monday, November 27, 2023

[**10:00am – 11:00am BSEA Informational Session**](https://us02web.zoom.us/j/83258638535?pwd=dUk2UUUwemllTDlZUHA1NU9RQWxjUT09)

Monday, February 26, 2024

[**7:00pm – 8:00pm BSEA Informational Session**](https://us02web.zoom.us/j/83258638535?pwd=dUk2UUUwemllTDlZUHA1NU9RQWxjUT09)

Wednesday, February 28, 2024

[**12:30pm – 1:30pmpm BSEA Informational Session**](https://us02web.zoom.us/j/83258638535?pwd=dUk2UUUwemllTDlZUHA1NU9RQWxjUT09)

Wednesday, May 1, 2024

[**12:30pm – 1:30pm BSEA Zoom Informational Session**](https://us02web.zoom.us/j/83258638535?pwd=dUk2UUUwemllTDlZUHA1NU9RQWxjUT09)

Wednesday, May 1, 2024

[**7:00pm – 8:00pm BSEA Zoom Informational Session**](https://us02web.zoom.us/j/83258638535?pwd=dUk2UUUwemllTDlZUHA1NU9RQWxjUT09)

Additionally, the BSEA Coordinator of Mediation and the regional Mediators employ robust outreach to the following organizations to offer free informational sessions on mediation and facilitated team meetings. The BSEA believes that in order to provide meaningful access to dispute resolution through mediation, it must connect with as many groups that serve and support children with disabilities across the state.

Below is a list of all the organizations that the BSEA reaches out to annually to fulfill this mission.

|  |  |
| --- | --- |
| **Coordinator of Mediation** | **Regional Mediators** |
| * BSEA’s Statewide Zoom Program * Federation for Children with Special Needs (FCSN) * SEPACs/MassPAC * Special Education Directors * Special Education Private “766” Schools * Collaborative Special Education Programs * Social Service Agencies (DCF, DDS, DMH, etc) * Early Intervention Programs (DPH) * FCSN (Haitian, Chinese, Portuguese, Spanish, etc. family groups) * FCSN (Educational Surrogate Training) * FCSN BIPOC Families * FCSN (Community Mentors Training) * Legal Services Programs (MAC, GBLS, Harvard Legal Aid, Victim’s Rights Law Center, DLC, CLC, etc.) * Mass Commission for the Blind * Mass Commission for the Deaf and Hard of Hearing * Advocacy Organizations (SPaN, AANE, etc.) * Low Income Communities * ELL Communities * Incarcerated Students * Historically Marginalized Communities * CADRE * ASE * MetCo | * SEPACs * Special Education Directors * Collaborative Special Education Programs * Low Income Communities * ELL Communities * Historically Marginalized Communities     A group of children smiling together    *As Valerie Williams, Director of Special Education Programs, OSEP, said, “If people do not know we exist, we have failed.”*    *Families and school district have rights, they have options. When there is not a shared vision for a student, due process mediation is there to provide clarity, direction, and hopefully, resolution.* |

This outreach generates opportunities for the mediators and the Coordinator to connect with communities and groups across the state to provide meaningful information about mediation, including demystifying the process, and allow all parties to familiarize themselves with the approachable mediators they might work with.

In addition, the BSEA is committed to ensuring that historically marginalized communities understand their right to mediation, how to access mediation and feel safe doing so. The BSEA makes extra efforts to identify and reach out to these communities through additional, focused offers for informational sessions about mediation and facilitation. The BSEA uses DESE’s District Profile data to identify communities which serve large populations of historically marginalized students. The BSEA collects feedback from the FCSN and its’ ELL parent groups as well as feedback from families, family advocates, and school districts to better understand barriers to accessing mediation. The BSEA then uses the information to adjust its outreach and the accessibility of their informational presentations.



**EVALUATING THE BSEA’S MEDIATION PROGRAM**

The BSEA evaluates its mediation program on an on-going basis in an effort to maintain high quality mediation and accessibility of the process to families, school districts, and state agencies across the state. Through evaluation we ensure that policies, procedures, and practices are implemented with fidelity and compassion. We improve access to and effectiveness of mediation, which in turn, increases use of the mediation program for collaborative dispute resolution.

The Coordinator and mediators meet monthly to review technical support, administrative procedures, mediation skills and techniques, and relevant special education topics. The monthly mediator meeting supports collaboration amongst the full time, experienced mediators to enhance the team’s overall skill and effectiveness. The coordinator periodically observes each mediator and provides specific feedback with a detailed plan for improving both the mediator’s skills and the mediation process for participants.

The Coordinator and mediators use DESE and BSEA collected data as well as feedback gathered through our outreach programming, parties’ conversations with mediators, parties’ conversations with the Coordinator, in addition to our relationships with advocacy, family, and school organizations. We utilize this feedback to analyze the effectiveness of the mediation program, enhance access, clarify the mediation process, review durability of mediated agreements, inform professional development programming, and improve outcomes for students. Additionally, the BSEA surveys mediation participants anonymously about their experiences. It uses this information for internal professional development to improve access and understanding of the process.



BSEA DIRECTOR OVERSIGHT

The Director of the BSEA and the Coordinator of Mediation meet regularly to discuss collected data, improving access to the mediation process including issues related to managing the mediators’ heavy workloads, improving effectiveness of mediation, trends in special education, and supporting meaningful professional development opportunities.

DESE QUARTERLY MEETINGS

The BSEA Director, the Coordinator of Mediation, and staff from DESE meet four times annually to review relevant mediation and rejected IEP data in order to inform DESE’s general supervision system under the IDEA and to promote cross agency support for and meaningful access to special education mediation.

[BSEA ADVISORY COUNCIL](https://www.mass.gov/info-details/bureau-of-special-education-appeals-advisory-council)

Quarterly meetings Pursuant to Mass General Laws chapter 71B, § 2A, the Advisory Council provide advice and feedback to the Chief Magistrate of Division of Administrative Law Appeals (DALA), the Director of the Bureau of Special Education Appeals (BSEA), and the Commissioner of the Department of Elementary and Secondary Education (DESE) regarding the fair and timely resolution of disputes under federal and state laws governing special education.

Quarterly, the BSEA Coordinator of mediation participates in sharing information with the Council and receives helpful feedback related to improving access and effectiveness of mediation in special education disputes.

[SPECIAL EDUCATION ADVISORY PANEL](https://www.doe.mass.edu/bese/councils/sped/)

Annually, the BSEA Coordinator of mediation participates in sharing information with the SEA Panel and receives helpful feedback related to improving access and effectiveness of mediation in special education disputes.

INFORMATION RECORDED FROM MEDIATION REQUESTS

The BSEA uses a formal case tracking program to collect, store, and analyze mediation data. Annually, in November, the BSEA reports mediation data from the prior fiscal year (July 1 – June 30) to federal and state agencies.

For federal reporting, the BSEA reports all the mediation requests that occurred during the reporting period. Of those requests, the BSEA reports how many cases were mediated, including how many mediations were a result of due process complaints and how many agreements were reached for those cases; how many mediations were not a result of due process complaints and the number of agreements that were reached for those cases; the number of mediation requests that were pending at the end of the fiscal year; and the number of mediation requests that were withdrawn or not held during the fiscal year.

For state reporting, the BSEA reports the total number of mediation requests that occurred during the fiscal year and the total number of mediations that were held during the fiscal year (some of these requests were initiated in the previous fiscal year).

It should be noted that the numbers reported for the federal reporting and the state reporting are often different numbers since the scope of data reported is different for each of these reports.

Quarterly, the BSEA meets with and shares relevant mediation and rejected IEP data with DESE in order to further our shared goal of improving understanding of and access to mediation across the various communities and school districts.

Again, the BSEA informally reviews mediator caseloads in order to ensure that they are equitable, and that participant wait times for mediations are balanced. If a mediator’s caseload becomes off-balance, cases will be internally reallocated. If overall mediator caseloads are unbalanced, the Coordinator will adjust mediators’ regional zones. This data is collected as a result of weekly reporting from the mediators to the Data Coordinator. Additionally, BSEA collected data is used to analyze regional assignments of mediators and to ensure caseload balance, access to mediation from communities across the state with a particular focus on communities with large populations of historically marginalized groups, and equity in mediation scheduling time frames.



**MEDIATION AND WRITTEN STATE COMPLAINTS**

Problem Resolution Systems (“PRS”)

Mediation may help resolve issues that are also the subject of simultaneous PRS complaints under §§[300.151 through 300.153](https://sites.ed.gov/idea/regs/b/b). BSEA notifies parents and school districts in their outreach programming and on the BSEA website that they may mediate open PRS complaints. Additionally, in its letter to complainants and on its website, PRS notifies parties of their option to voluntarily engage in mediation consistent with §300.506 [34 C.F.R. §300.152(a)(3)(ii)] [[OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), A-4](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf)].

The 60-day timeline for resolving a State complaint may be extended if the parties to a mediation agree to an extension. This extension is not automatic and must be agreed to by all of parties. [[OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), B-23](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf)].

The requirement of confidentiality of the mediation process is automatic and may not be altered or modified by parties to mediation conducted under §[300.506](https://sites.ed.gov/idea/regs/b/e/300.506). In addition, neither the IDEA nor its implementing regulations creates exceptions to confidentiality requirements for discussions that occurred during the mediation process when a complaint is resolved through DESE’s complaint system, Problem Resolution System (“PRS”), pursuant to §§[300.151 through 300.153](https://sites.ed.gov/idea/regs/b/b). The confidentiality requirement also prohibits disclosure of mediation discussions during the resolution of a state administrative complaint [[OSEP Memo and Q&A on Dispute Resolution (July 23, 2013), A-25](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf)].

Further, the confidentiality requirement applies regardless of whether or not the parties resolve a dispute through the mediation process. If the parties resolve a dispute through the mediation process, they must execute a legally binding, written agreement that also includes a statement that all discussions which occurred *during* the mediation process will remain confidential [34 CFR §[300.506(b)(6)(i)](https://sites.ed.gov/idea/regs/b/e/300.506/b/6)].

PRS COMPLAINT RESOLVED THROUGH MEDIATION

If issues that were the subject of a pending PRS complaint are resolved through mediation, the mediated agreement will outline how the parties will notify the PRS specialist of the resolution and outline the impact on the PRS complaint if any.

**MEDIATION AND DUE PROCESS COMPLAINTS**

When a due process hearing request is filed with the BSEA, a packet is sent to the parties, which includes notice that they may voluntarily engage in mediation to attempt to resolve the issues that are the subject of the due process hearing request. Mediation may be sought and held even once a due process hearing request has been filed. If necessary, parties may request that a hearing officer postpone the hearing date in order to use the mediation process.

When a due process complaint is filed by the parent, the LEA must hold a resolution meeting within 15 calendar days of receiving the complaint (unless both parties agree to waive that meeting in writing). However, in lieu of the resolution meeting, the parent and the district may agree to mediate to resolve some or all of the issues that gave rise to the complaint. [34 CFR §[300.510 (a)(3)(ii)](https://sites.ed.gov/idea/regs/b/e/300.510/a)]. While the Coordinator and mediators will make best efforts to provide a mediation date within the statutory timeframe of the resolution session, they may not have available dates. The parties may mutually agree to extend the resolution period and request a postponement of the hearing date (if necessary) to engage in mediation in lieu of the resolution session.

All discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing. On the other hand, unless otherwise agreed between the parties, a mediated agreement may be entered as evidence in a due process hearing.

HEARING REQUEST RESOLVED THROUGH MEDIATION

If issues that were the subject of the pending hearing are resolved through mediation, the mediated agreement will outline how:

* The parties will notify the BSEA Hearing Officer of the resolution and
* How and when to request the withdrawal of the hearing.



**Facilitators for Remote Team Meetings**

**The BSEA has facilitators remotely available at no cost to the parties to help with difficult IEP Team meetings.**

**Bureau of Special Education Appeals Facilitated Team Meetings (FIEP)**

To help special education and 504 Accommodation teams have productive and collaborative meetings, the Bureau of Special Education Appeals provides the option of remotely facilitated IEP and 504 team meetings (“FIEPs”).

**What is a facilitated team meeting (FIEP)?**

The TEAM meeting is conducted remotely and in exactly the same manner as it would be without the presence of the facilitator. A member of the IEP team leads the IEP meeting, typically the District’s Team Chair. The District is responsible for developing the attendance list and setting up the meeting.

The facilitator is an impartial, trained person provided by the BSEA to support the process of the team meeting. The facilitator helps keep the team members focused on the purpose of the IEP or 504 meeting while supporting a positive and collaborative tone for communication. The facilitator will work to create an environment in which the IEP/504 team members can listen to one another’s points of view and work together to develop an IEP/504 Plan that is acceptable to both the parents and the school district.

Either the parent or the school may request a facilitated team meeting and *both parties*must agree for the BSEA to facilitate the meeting.

Interpreters are provided by the Student’s school district for team meetings.

Please let the BSEA Facilitator know if you require any accommodations to access the remote meeting.

If a parent needs support in accessing a laptop or internet, please let the facilitator know and they will help you work with your Student’s district to provide you access to this remote meeting.

**What is the Difference between a Mediation and a Facilitated Team Meeting?**

Mediation is a voluntary and confidential collaborative problem-solving process run by an impartial trained BSEA mediator. The goal of mediation is to reach resolution on areas of disagreement and for the Parties to enter into a legally binding written mediated agreement that lays out the terms of the agreement. Mediation is not a team meeting.

Facilitation is when the parties voluntarily agree to have a BSEA facilitator attend a team meeting to help the team achieve the agenda of the meeting and conduct team business. The team meeting is run by the district’s team chair, the facilitator is invited, by agreement of both parties, to support productive communication between the team members and clarify information or questions. The facilitator is not a member of the student’s team. A facilitated team meeting will not turn into a mediation.

|  |  |
| --- | --- |
| **Facilitation** | **Mediation** |
| * **Voluntary** * **Need to meet as a team to conduct team business** * **Team members attend** * **Team chair runs the meeting** * **Not a mediation** * **Facilitator supports the team conversation** | * **Voluntary and Confidential** * **Purpose to reach written, binding settlement agreement between the parties** * **Have specific areas of disagreement** * **The parties attend, not necessarily all team members** * **Outside of team process** * **Not a team meeting** |

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**Role of the Facilitator:**

* maintains impartiality and does not take sides or place blame;
* helps members of the team focus on the needs of the child and on developing a mutually acceptable IEP/504 Plan;
* assists the team in discussing conflicts and disagreements related to the IEP/504 Plan;
* helps maintain open communication among all members;
* helps team members develop and ask clarifying questions;
* helps team members stay on task and within the time allotted for the meeting;
* does not determine if a particular decision is right or wrong; does not take sides;
* does not impose a decision on the group;
* does not keep a record of the conversation, cannot subsequently be called to testify about the conversation

**Who is the facilitator?**

BSEA Mediators and the Coordinator of Mediation and Facilitation serve as BSEA Facilitators. Facilitators are neutral parties, they do not represent school districts, parents, students, or the Department of Elementary and Secondary Education (DESE). Facilitators are there to support the process of the team meeting. Facilitators are not the mediator who would handle a mediation request in the given school district. Rather, the facilitator is drawn from the pool of the five (5) other mediators and the Mediation Coordinator. The BSEA assigns facilitators to meetings based on availability, it cannot guarantee the availability of any particular facilitator for a meeting.

**Benefits of a facilitated team meeting:**

* may build and improve relationships among the team members and between parents and schools;
* models effective communication and active listening;
* clarifies points of agreement and disagreement;
* assists parties in completing agenda during meeting in order to facilitate the development of an IEP or 504 Plan;
* keeps meeting participants from getting stuck on just one part of IEP or 504 Plan;
* Supports appropriate and positive communication between team members in challenging and/or difficult conversations;
* keeps team members on task and the meeting within the scheduled timeframe;
* keeps meeting focused on development of student’s IEP/504 Plan

**How do I request a facilitated team meeting?**

Either parents or school districts can request a facilitated team meeting; however, both parties must agree to use this voluntary process. When both parties have agreed to have a BSEA facilitator attend the team meeting, the school district should reach out to the BSEA’s Coordinator of Mediation and Facilitation to make the request. The Coordinator can be reached at:

Myrto Flessas (781-397-4794, 857-260-4541, [**Myrto.flessas@mass.gov**](mailto:Myrto.flessas@mass.gov)) \*Email is preferred.

The Coordinator will gather the necessary information and notify the school of the next available date for a remotely facilitated team meeting. The district is then responsible for checking if the parent is available for the proposed date. The BSEA can only offer one date at a time due to the heavy volume of requests we receive for facilitated meetings. The facilitator will then provide the Agreement for Facilitation form that must be signed by ALL meeting participants. The form will be emailed to participants with directions for completion.

**Who attends a facilitated team meeting?**

The required members of the IEP team attend the facilitated team meeting in addition to the facilitator. The District will invite required members of the team and, if they wish, parents may bring an advocate or other people who have knowledge or special expertise regarding the child. The facilitator does not make decisions about who attends the team meeting and does not send out invitations for the team meeting.

**Where and when is a facilitated team meeting conducted?**

In order to maximize the number of facilitation sessions the BSEA can provide, which are limited due to staffing resources and availability, the BSEA is only able to offer remote facilitation at this time. The team meeting must be attended remotely by all participants as we are not able to effectively facilitate hybrid remote/in person meetings. Also, we require that ALL meeting participants are visible during the entire meeting, and we ask that no more than two people be on any one screen.

Additionally, the BSEA is only able to provide 1.5 hour long remotely facilitated team meetings. If a meeting will take more than 1.5 hours, the BSEA will let the team know the next available meeting date and a second session may be scheduled.

If both parties have agreed to have the BSEA facilitator attend remotely and a facilitator is available, the facilitator will attend the meeting. If the BSEA does not have a facilitator available for a scheduled meeting, the parties can agree to change the meeting to a later date in order to meet at a time when a BSEA facilitator is available. If such delay would result in non-compliance with regulatory timelines for convening the TEAM meeting, the parties must jointly agree to waive such timeline. The option always remains for the parties or hold the meeting without a facilitator.

\*\*The BSEA will do its best to accommodate but cannot guarantee a facilitator will be available even if both parties consent, and parties may need to be flexible in order to schedule at a time a facilitator is available.



**Is there any type of procedural notice that I will receive from the BSEA regarding a facilitated team meeting?**

The district is required to give proper notice of the IEP meeting to the parents about the purpose, time, and location as well as who has been invited. The BSEA does not issue any notice or documents for facilitated team meetings other than the Agreement for Facilitation form which must be completed and returned to the facilitator prior to the meeting.

A BSEA Facilitated Team meeting follows all the rules and practices that any typical team meeting would follow. For example:

* District is responsible for confirming the meeting date, time, and facilitator contact information with the family.
* District is responsible for setting up the Remote Meeting Link
* District is responsible for developing the Meeting Agenda and sharing it with the family.
* District is responsible for sending out the Meeting Attendance Sheet to the family.
* District is responsible for arranging for any needed interpretation services or accommodations necessary for team members to access the meeting. Please notify the Facilitator if interpretation services or accommodations are required for any meeting participants.
* The District’s Team Chair will chair the meeting.
* District should do all the things it would typically do for any team meeting.
* Please reach out with any questions.

In addition, ALL meeting participants will be required to email sign an Agreement for Facilitation form prior to the meeting. The form outlines the role of a facilitator and notifies parties that the facilitator does not serve in a record keeping capacity for the meeting and cannot be called to testify about the meeting or have any records or work product subpoenaed.

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**Does the facilitator make decisions?**

No. The BSEA Facilitator is not a team member. The role of the facilitator is to facilitate communication among the IEP team members as they develop an IEP or 504 Plan for the student. The facilitator models effective communication skills and supports parties in their discussion in order to aid in their development of the IEP/504 Plan. Facilitators are trained in effective communication and ways to address and resolve conflicts. The members of the IEP team are the decision-makers.

**Who pays for the facilitated team meeting?**

There is no cost to parents or to the school district for BSEA facilitated IEP/504 team meetings.

**Preparation for a facilitated team meeting**

* consider the student’s strengths, needs, and interests and any major concerns about his or her education;
* consider how the student’s disability affects his or her education;
* consider the student’s educational progress. What has been working and what has not?
* read the student’s most recent school/independent evaluations and IEP/504 Plan; request a copy if you do not have one;
* most importantly: be willing to listen carefully and consider possible solutions and options

**What if the team is not in agreement after the facilitated team meeting?**

Some issues, disagreements, and problems may not be resolved through a facilitated team meeting. Parents and school districts retain their rights to other appropriate forms of dispute resolution such as mediation and due process hearings.

**Is there a guaranteed right for families and school districts to have access to a BSEA facilitator?**

No. The BSEA offers facilitation as an additional service when it has available trained staff to conduct facilitations. The BSEA will provide a remote facilitator only 1) if both the parent and school district agree on the need and make the request and 2) if the team meeting is scheduled remotely, for a maximum of 1.5 hours, and at a time/date that a BSEA facilitator is available.



1. For the purposes of BSEA Mediation, “parent” shall mean father, mother, legal guardian, foster parent, educational surrogate, or other legal decision maker appointed in accordance with state or federal law. [↑](#footnote-ref-1)
2. For the purposes of BSEA Mediation, “adult student” shall mean a student who is 18 years old or older. [↑](#footnote-ref-2)
3. Please note, a parent or agency shall request an impartial due process hearing within two (2) years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. A parent shall file a PRS complaint within one (1) year of the date the parent knew or should have known about the alleged action that forms the basis of the complaint. [↑](#footnote-ref-3)
4. For the purposes of BSEA Early Intervention Mediation, “parent” shall mean father, mother, legal guardian, person acting as a parent of the child, foster parent, or other legal decision maker appointed in accordance with federal law. [↑](#footnote-ref-4)