**MASSACHUSETTS**

**BUREAU OF SPECIAL EDUCATION APPEALS MEDIATION MANUAL**

Bureau of Special education appeals

14 Summer St., 4th Floor

Malden, MA 02148

781-397-4750

<https://www.mass.gov/mediation-at-the-bsea>

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

**BSEA Mediators are available to answer your questions and help you through the mediation process.**

**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 Office of Special Education Program’s (OSEP) Dispute Resolution Self-Assessment and OSEP Memo and Q&A on Dispute Resolution (2013), 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 interpretation of the regulations.

Stakeholders providing feedback included:

Melanie Reese (and CADRE Staff), The Center for Appropriate Dispute Resolution in Special Education

Reece Erlichman, BSEA Director

Myrto Flessas, BSEA Coordinator of Mediation and Facilitation

Rebecca Stone, BSEA Mediator/Data Coordinator

BSEA Mediators Steven Archibald, Leslie Bock, Matthew Flynn, Steven Lilly-Weber, Beth Ross

Written and oral comments by members of the public:

Department of Elementary and Secondary Education (DESE)

Bureau of Special Education Appeals Advisory Council

\*\*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. \*\*

**Table of Contents**

Mediation4

Mission4

Voluntary5

Confidential5

Written, Binding Settlement Agreement5

When to Use Mediation6

When Mediation May Not Be Used7

Benefits of Mediation8

What Can Be Mediated9

Mediator Contacts10

Requesting a Mediation11

Requesting an Early Intervention Mediation12

Helpful Information to Share with the Mediator13

Once the Request Has Been Received by the Mediator14

The Agreement to Mediate Form (email)15

Scheduling Mediation17

Interpretation/Translation17

Reasonable Accommodations (ADA)17

Preparing for Mediation18

Parent Checklist19

District Checklist20

Parties to Mediation21

Students at Mediation23

Attorneys at Mediation24

The Mediation25

Emotions at Mediation26

The Mediated Agreement27

Settlement Reached Through Mediation27

Failure to Implement a Mediated Agreement28

The Massachusetts Model29

The Coordinator of Mediation and Facilitation29

The Mediators/Facilitators29

Technical Assistance30

Notice of Right to Request Mediation31

Making Mediation Accessible32

Evaluating the BSEA’s Mediation Process36

Mediation and Due Process Complaints (Hearing)38

Mediation and State Complaints (PRS)39

BSEA Facilitated Team Meetings (Remote)40

**MEDIATION**

Mediation is a voluntary and confidential process that brings parents[[1]](#footnote-1) 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), to help the parties reach a legally binding, signed agreement to resolve the dispute.

Parties do not have to file for a due process hearing in order to access mediation.

**MISSION**

* 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.

**VOLUNTARY**

Mediation is a voluntary process that can be requested by parents, adult students, or school districts. No party can be forced to participate. By choosing to mediate, all parties agree to collaborate in good faith towards a resolution. Both families and school districts must agree to mediation for it to proceed. Mediation is not required before filing a due process hearing request. Mediators and the Mediation Coordinator can discuss the benefits of mediation, including its voluntary nature and the potential to resolve disputes without formal, potentially costly, and adversarial proceedings.

**CONFIDENTIAL**

 All mediation discussions, including negotiations and settlement positions, are confidential and cannot be used as evidence in future legal proceedings or court cases [34 CFR §300.506(b)(8); M.G.L. ch. 233, § 23C]. This confidentiality applies to all mediation-related discussions, draft resolutions, and any unsigned agreements. Such discussions cannot be shared with non-participants or referenced in future meetings. Parties can share mediation details with their attorney but agree not to call the mediator as a witness or request mediation materials for litigation. The mediator will explain and uphold this confidentiality.

Confidentiality is automatic and cannot be altered by the parties. The IDEA and its regulations do not allow exceptions to this confidentiality, even in the state administrative complaint process. If a dispute is resolved through mediation, the agreement will be legally binding and must state that mediation discussions remain confidential [34 CFR §300.506(b)(6)(i)]. Parties may decide whether the mediated agreement itself remains confidential, but no additional confidentiality pledge can be required before mediation begins [OSEP Letter to Anonymous, July 31, 2020].

**Written, binding settlement agreement**

Parties demonstrate good faith in mediation by working towards a legally binding written agreement that reflects their resolution of the dispute. The mediator will help narrow points of agreement and draft a mediated agreement based on the discussions. Only the terms in this fully executed agreement are enforceable. The agreement will specify that all mediation discussions remain confidential and cannot be used in future legal proceedings.

The mediated agreement must be signed by the parent or adult student and a school district representative with binding authority. Once signed, it is legally binding and enforceable in state or federal court. Participation in mediation is voluntary, and there are no penalties for not reaching an agreement.

Although mediation discussions are confidential, the IDEA does not specifically require the mediated agreement itself to be confidential. Typically, the signed agreement can be presented in hearings, but the mediation discussions cannot be disclosed. Confidentiality provisions under IDEA and FERPA also apply.

If any issues are unresolved by the mediated agreement, the parent may file a complaint with DESE’s Problem Resolution System (“PRS”) or request a BSEA due process hearing seeking relief.

**WHEN TO USE MEDIATION**

Mediation provides parents, adult students, and public-school districts or state educational agencies with a way to resolve disputes related to special education or 504 accommodations. This includes issues under 34 CFR § 300, 603 CMR § 28, and §504 of the 1973 Rehabilitation Act, regardless of whether a due process complaint (hearing request) has been filed. These matters can involve the identification, evaluation, or educational placement of a child with a disability, ensuring the students receives a free appropriate public education (FAPE), and any other issues covered by the above mentioned statutes and regulations. Importantly, parties can pursue mediation without first filing a due process complaint.

Top of Form

Bottom of Form

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
* Least Restrictive Environment (LRE)/Placement
* Extended School Year
* Transition Programming
* Compensatory services
* Transportation
* 504 Accommodation Plans
* Issues raised in a parentally filed hearing requests, in lieu of a BSEA Due Process Hearing

Resolution Session

* Early Intervention programming disagreements

Parties can use voluntary mediation to settle a filed BSEA due process hearing or pending Department of Elementary and Secondary Education (DESE) Problem Resolution Systems (PRS) complaint. Mediation is also available even a due process hearing or PRS complaint has not been filed. The specific issues to e addressed in voluntary mediation are agreed upon by all parties involved.

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 all 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 under 34 CFR §300.506(a) can resolve disputes related to IDEA Part B before a parent revokes consent for special education services. However, similar to situations where mediation isn't allowed when a parent initially refuses consent (to protect their right to refuse services), mediation also isn't suitable after a parent revokes consent for special education services [73 Federal Register, December 1, 2008, pg. 73016].

Mediation is not a team meeting and will not take the place of a team meeting. Team meetings are required to conduct official team business, such as discussing evaluations or updating an Individualized Education Program (IEP). In contrast, mediation sessions involve collaborative work facilitated by a mediator to resolve specific issues and reach a binding settlement agreement. For instance, if a new evaluation is completed, the team must convene to review it and determine necessary changes, if any, to the IEP. If disagreements persist after the team meeting, parties can choose voluntary mediation to settle the dispute.

**BENEFITS OF MEDIATION**

there are many benefits to using mediation to resolve a disagreement between families and school districts including:

* Parties have control of the outcome
* Parties decide on the solutions that work for them
* Mediations support family and school relationships
* Mediation is free and typically a faster process for resolution
* Mediation has a high agreement rate – an average of 85% cases resulted in agreement
* Parties can address big or small issues in mediation

**MEDIATION IS FREE TO FAMILIES AND SCHOOL DISTRICTS**

The IDEA provides that each state must pay 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 the cost of interpreters/translators. 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)].

**MEDIATION AGREEMENT RATES**

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

***Reach out to the mediator who covers your region or to the Coordinator of Mediation if you want to know about how Mediation could be helpful to you.***

**WHAT CAN BE MEDIATED**

Anything related to special education or 504 accommodations can be mediated by the BSEA. For example:

*And many more….*

***Reach out to the mediator who covers your region to discuss your concerns and ask your questions.***

**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)

**South Shore, Cape, and the Islands**

Matthew Flynn  617-997-2291 [matthew.flynn@mass.gov](mailto:matthew.flynn@mass.gov)

**North Shore**

Rebecca Stone 857-294-0132  [rebecca.stone@mass.gov](mailto:rebecca.stone@mass.gov)

**Northwest Metro Boston Suburbs and Boston**

Leslie Bock 857-378-6707   [leslie.bock@mass.gov](mailto:leslie.bock@mass.gov)

**Metro Boston North Suburbs**

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.

**REQUESTING A MEDIATION**

Requests for mediation are made directly to the BSEA Mediator who covers your region. 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 and/or have emails and all forms translated into your preferred language.\*\*\***

After you call or email, the 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 |

**Requesting an Early Intervention Mediation**

M.G.L. ch. 233, § 23C; 34 CFR § 303.431 (<https://sites.ed.gov/idea/regs/c/e/303.431>)

Please visit the Early Intervention Dispute Resolution website at:

[Requesting Early Intervention Mediation | Mass.gov](https://www.mass.gov/guides/requesting-early-intervention-mediation)

The process for requesting a mediation for a child who is in Early Intervention is different than it is for children aged 3 years old to 22 years old.

* A mediation request is made by Parent 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))
* 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/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 assigns a mediator who is available to hold the mediation within the target timeframe of 14 days of the request.
* 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.

**HELPFUL INFORMATION TO SHARE WITH 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?  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).
* 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 PRS) Complaint?
* Does the family need interpretation/translation services? Which Language? Once identified, the Mediator will ensure interpretation and translation are provided throughout the process as required.
* To request a reasonable accommodation for mediation, please reach out directly to DALA/BSEA’s ADA Coordinator, Jim Rooney, at [james.rooney@mass.gov](mailto:james.rooney@mass.gov) or at 781-397-4700 (<https://www.mass.gov/info-details/how-to-request-an-ada-accommodation>).
* 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 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 they are open to using mediation to resolve the dispute.
  + If the other party agrees to mediate, the mediator will email the Agreement to Mediate form which will need to be electronically 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 to the mediator, the mediator will schedule the mediation in collaboration with the parties. Mediation will be scheduled as quickly as possible with consideration given to the family’s availability, the School District’s availability, and the mediator’s availability.
  + If the non-requesting party does not want to mediate, they 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 from 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.
  + 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 exist 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 electronically 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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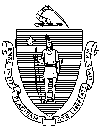
\*\* Please complete and email return this form to me ASAP. Also, forward this form to anyone who will be attending the Mediation and ask that they complete and return it directly to the Mediator via email.

**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,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please reach out to your mediator with questions. Additionally, if a parent or student does not have access to a computer or email address, the mediator can 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 offers year-round mediation but does not provide expedited or emergency mediation options. Mediations are scheduled as quickly as possible and can be conducted either virtually (primarily via Zoom) or in person. The mediator assigned to your region will coordinate with both parties to set a date, time, and location based on availability. Often, mediation is held virtually for the parties’ convenience. In person mediations are held in the student’s school district at a convenient location, typically in a municipal or school building. Please let your mediator know if you have any questions.

The BSEA monitors mediator caseloads to ensure fairness and balance across regions, reallocating cases or adjusting regional zones based on weekly and annual data reviews. Parties can reach out to their assigned mediator or the Coordinator of Mediation with questions about the scheduling of mediations.

The duration of mediation varies based on the complexity of issues, parties' availability, participant cooperation, or the need for interpretation services. Mediations typically require 2 to 4 hours. Rarely, a second session may be needed and scheduled. Mediation is intended to resolve disputes quickly to avoid lengthy and costly litigation.

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)].

Again, parties can access mediation even without a pending due process hearing or PRS complaint. However, mediation should not delay the 30-day resolution unless agreed upon by the parties or the 45 day due process time line unless allowed by the hearing officer. Similarly, mediation does not affect the 60-day State complaint timeline without an extension agreement.

***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.***

**INTERPRETATION/TRANSLATION**

Interpreters and translation 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. Additional time will be scheduled to support interpretation services.

**REASONABLE ACCOMMODATIONS (ADA)**

To request a reasonable accommodation for mediation, please reach out directly to DALA/BSEA’s ADA Coordinator, Jim Rooney. Jim can be reached at [james.rooney@mass.gov](mailto:james.rooney@mass.gov) or at 781-397-4700 (<https://www.mass.gov/info-details/how-to-request-an-ada-accommodation>).

**PREPARING FOR MEDIATION**

MEDIATION MINDSET: 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 .(virtual platform mediation)
* 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 CHECKLIST**

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? Then yes!
  + Do I want a decision about who is wrong or right? The mediation may not be 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 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?

Before Signing the Mediated Agreement

* Do I understand the language in the 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”?
* Have I asked what happens to issues we did not resolve today?
* Do I want the agreement translated before signing it?
* Do I know what my next steps are? Do I know what the district’s next steps are?

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 we need a follow-up mediation?
* Do we want to use the BSEA Facilitated Team Meeting process in the future?

**DISTRICT CHECKLIST**

Request/Setting-Up Mediation

* Have 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 is needed at the mediation to make decisions? Have I notified all staff who I need to be present?
  + Have I explained the “mediation mindset” to my staff?
  + Does the School Team know they can continue working with the family while waiting for mediation?
  + Have we considered what compromise might look like or alternate or creative ways to resolve issues?
  + Have I worked with any potentially defensive or emotional staff about utilizing mediation?
  + Does the staff understand the flexibility of a Mediated Agreement (settlement, separate from IEP, revising/amending IEP)?
  + Does the District know what it wants to share in the joint session and what 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 or want to use a Facilitated Team Meeting process going forward?

**PARTIES TO MEDIATION**

Parties to the mediation are **REQUIRED** to attend the mediation. “Parties” to mediation are:

1. **The legal decision maker for the student**, usually the parents of a child with a disability as defined in §[300.30](https://sites.ed.gov/idea/regs/b/a/300.30) or the adult student, *AND*
2. **A school district (LEA) representative with settlement authority** on behalf of the school district.
3. In some cases, a party to IDEA mediation could be a State agency in accordance with §[300.228](https://sites.ed.gov/idea/regs/b/c/300.228), or another public agency that has 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 is available only to parents, adult students, public educational agencies and private schools and agencies which receive public funding to provide special education services to a student, to resolve disputes involving any matter under 34 CFR part 300 (special education, 504 accommodations), 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:

1. Local Educational Agency (LEA) - a local school district (LEA),
2. Department of Elementary and Secondary Education (DESE),
3. 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
4. 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.

If the REQUIRED PARTIES are not present for the mediation session, THE MEDIATION WILL NOT GO FORWARD.

In mediation, a party can also bring **OPTIONAL PARTICIPANTS**. Optional Participants are people Parties can bring to mediation to support them during the mediation. Since mediation is voluntary, any party can refuse to participate if they disagree with the inclusion of certain individuals, including attorneys. In order to reach a binding agreement during mediation, each party should bring whoever is necessary to finalize the resolution.

|  |  |
| --- | --- |
| **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 (friend, family member, someone who helps and supports you) * Advocate * Outside service providers * Therapist * Independent evaluator * Insurance-based/privately paid 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 minor 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:

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.

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. If the student agrees, parents may be a part of the conversation. The mediator will provide the student with information about BSEA Mediation participation for students who are 18 years old or older, so the student understands their options.

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 applies to 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 or all 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 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 or all of the mediation.
4. Not attend the BSEA Mediation. The student will present the District and the BSEA with 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.

**ATTORNEYS AT MEDIATION**

Parties are not required to have an attorney to participate in mediation. However, parties are welcome to bring an attorney to mediation if they choose. If so, please notify the mediator. The mediator will notify the other party to allow them the opportunity to also have an attorney at the mediation.

Mediation is a collaborative process where parties negotiate a mutually agreeable settlement; if a party would like the input and support of an attorney to develop the terms of an acceptable settlement, the attorney should attend the mediation, which is the settlement conversation, to lend their voice and advice as the agreement is negotiated and developed. However, the Parties may build in extra time for the agreement to be signed as developed so as to allow for consultation with counsel subsequent to the mediation. In this case, unless otherwise agreed upon by the parties, typically, no changes would be allowed to the agreement, but as mediation is voluntary, no one is compelled to enter into an agreement unless they would like to do so. Note that sharing information from the mediation and the mediation conversation with an attorney *does not* violate mediation confidentiality.

Please feel free to discuss your thoughts or questions on who you should bring with you to mediation with your mediator.

[Directory of Free and Low Cost Legal/Advocacy Services](https://www.mass.gov/doc/directory-of-free-and-low-cost-legaladvocacy-services/download): https://www.mass.gov/doc/directory-of-free-and-low-cost-legaladvocacy-services/download

**THE MEDIATION**

Virtual Platform or In Person:

* Virtual Platform (typically 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 preferences 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 move 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 resolve the issues with the parties.

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.
* The agreement will be interpreted and translated if necessary.

Signing the agreement

* Mediated agreements are signed at mediation unless additional time is identified in the agreement for consultation with counsel before signing.
  + Parties requiring translation may build in time for the agreement to be translated prior to signing.
* 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 in good faith and to treat the mediators and each other respectfully and courteously.

***Please reach out to your mediator to discuss any concerns prior to or during mediation.***

**THE MEDIATED AGREEMENT**

**SETTLEMENT REACHED THROUGH MEDIATION**

The goal of mediation is to resolve the dispute by executing an enforceable, legally binding written agreement reflecting that resolution.  All Parties will be provided with a copy of a signed mediated agreement.

* The mediated terms of the mediated agreement will be discussed and finalized during the mediation process.
* The mediator will assist the parties in narrowing down points of agreement to resolve disputed issues.
* The mediator will document the agreed-upon terms in a Mediated Agreement.
* Only the terms included in a fully executed (signed) legally binding mediated agreement are agreed upon and enforceable.
* The mediated agreement will state that all mediation discussions are confidential and cannot

be used as evidence in any future legal proceedings.

Mediation is voluntary, and the parties will only sign a mediated agreement if they agree to its terms. Once both parties sign it, the mediated agreement becomes binding. If no agreement is reached during mediation on some or all issues, the parties can still file a complaint with PRS or request a due process hearing with the BSEA without repercussion.

Mediated agreements are signed at the end of the mediation session, unless the Parties build in extra time for the agreement to be signed as developed so as to allow for consultation with counsel subsequent to the mediation or for the agreement to be translated prior to signature. If conducted in person, parties sign at the mediation table. If conducted via Zoom, the mediator sends the agreement via electronic signature for parties to sign by the end of the day. If the mediated agreement requires translation prior to being signed, the Parties will work with the mediator to include extra time for signature.

A mediated agreement must be signed by both the parent and/or adult student and a representative of the public agency with binding authority [34 CFR §300.506(b)(6)]. Once signed, the mediated agreement is legally binding and enforceable in state or federal court 34 CFR §§300.506(b)(7). If agreement is reached at mediation, the parties will sign a written agreement affirming that all mediation discussions are confidential and inadmissible in any future legal proceedings.

Please note, while discussions during mediation must be confidential, the IDEA and its regulations do not specify whether the mediated agreement itself must remain confidential. Therefore, parties can voluntarily agree to restrict disclosure of the mediation agreement to third parties or allow its release to the public, as the IDEA does not prohibit such agreements. However, confidentiality provisions under 34 CFR §§300.611 through 300.626 and the Family Educational Rights and Privacy Act (FERPA) would apply.

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 neither party can 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 a state court of competent jurisdiction or in federal District Court R §[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.

**THE MASSACHUSETTS MODEL**

How does Mediation work in Massachusetts?

**The coordinator of Mediation and facilitation**

The Coordinator administers IDEA Part B and, through an Interagency Service Agreement with DPH , Part C mediation at the BSEA. The Coordinator represents the mediation and facilitation program at state and federal education agencies, supervises mediators, provides professional development, ensures equal access to mediation, manages mediation coverage statewide, manages outreach programs, assists in policy development, responds to community inquiries, offers technical assistance to participants, explains mediation benefits and confidentiality requirements, oversees mediation data collection and evaluation, provides real-time support to mediators, works with mediation participants to ensure comfort with their assigned mediator, and supervises 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. (See “Making Mediation Accessible” section below for more information). 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 at <https://www.mass.gov/info-details/mediation-and-facilitation-informational-sessions>. Add link 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/facilitators**

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.  In order 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 a specific technique or strategy 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 law 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. Mediators are provided with ongoing professional development that covers topics related to mediation skills, special education and 504 accommodation information, and diversity, equity, and inclusion training; this includes annual wide-ranging professional development required by the Commonwealth of MA.

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 and cannot be employees of DESE or any LEA in Massachusetts [34 CFR §300.506(c)(1)]. They do not have any personal or professional interests that could compromise their neutrality during mediation. If a conflict arises, the mediator will withdraw, and the Coordinator of Mediation will assign a different, randomly selected mediator. Participants with concerns about potential conflicts should contact the Coordinator of Mediation for review. The Coordinator will investigate and decide whether the mediator can continue or if a new mediator should be assigned. Additionally, if a party prefers not to work with the assigned mediator, they can request an alternate, randomly selected mediator from the Coordinator.

**TECHNICAL ASSISTANCE**

The Coordinator and the Mediators provide technical assistance to enable families and school districts:

* to better and more fully understand the mediation process;
* to understand how to request mediation;
* to support preparation for their participation;
* and to answer any questions mediation participants may have about mediation, including how it compares with other dispute resolution processes.

***Please reach out to your mediator to discuss any concerns prior to or during mediation.***

**Notice of right to request mediation**

Families and school districts 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 school districts 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 districts with the list of the information they are required to provide to the BSEA when an IEP is fully or partially rejected or when there has been no response to an IEP.
  + 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://sites.bc.edu/spedexconsultation/).
  + Annually, the BSEA sends out Informational packets to over ten thousand parents.
* Robust outreach by the Coordinator and mediators, please see the “Outreach” section below.

**MAKING MEDITATION ACCESSIBLE**

The BSEA actively promotes, ensures understanding of, and enhances accessibility to the mediation process for all families and school districts. Annually, the BSEA reviews its policies and practices to improve access for families and school districts.

The BSEA offers an effective and accessible mediation program through rigorous notification policies, experienced full-time mediators, accessible request and mediation procedures, robust outreach efforts, and convenient technical assistance.

Ensuring that all participants, regardless of socio-economic status, education, language, disability, race, gender, or any other protected class, have access to special education mediation is crucial. The BSEA aims to provide meaningful access to information about the mediation process, how to request mediation, and to facilitate ease of participation in mediation.

**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 informational packets for parents. The BSEA is notified of all fully rejected, partially rejected, and non-responded to IEPs, typically receiving over 10,000 notifications from LEAs annually. Once the BSEA receives this information, it sends an informational packet to families that includes information on:
  + Mediation,
  + Due Process Hearing,
  + Legal and Advocacy Agencies that offer free or low-cost representation,
  + Massachusetts’ SpedEx Program.
* The BSEA provides information on its website[:](https://www.mass.gov/mediation-at-the-bsea)  [Mediation at the BSEA | Mass.gov](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.

**accessibility**

* 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 and translation 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.
* Reasonable accommodations requests are made directly to Jim Rooney, the DESE/BSEA ADA Coordinator. Jim can be reached at [james.rooney@mass.gov](mailto:james.rooney@mass.gov) or at 781-397-4700 (<https://www.mass.gov/info-details/how-to-request-an-ada-accommodation>).

**highly skilled and specialized mediators**

* BSEA mediators exclusively mediate special education disputes.
* BSEA mediators mediate a high volume of cases each year, enhancing their experience.
* BSEA mediators also facilitate team meetings, staying connected to special education team dynamics and issues.
* The full time mediator model provides 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 strongly believes in maintaining an accessible mediation process and ensuring that both mediators and the Coordinator of the program are readily available to families and school districts. Therefore, along with providing direct mediator contact information in the IEP Rejection/non-response Packet, we also publish our cell phone numbers and email addresses on our website

**outreach**

The BSEA is committed to ensuring that the families, school districts, and other Massachusetts state agencies understand their due process options and how to access them. In an effort to provide as much information as possible 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. Check the BSEA website for dates and virtual links for these informational sessions. https://www.mass.gov/info-details/mediation-and-facilitation-informational-sessions.

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 and mediator professional development. 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 Federation for Children with Special Needs and its English Language Learner parent groups as well as 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 its informational presentations.

Additionally, the BSEA Coordinator of Mediation and the regional Mediators employ robust outreach to 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 all groups that serve and support children with disabilities across the state.

Below is a list of l the organizations 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 in their region * Special Education Directors in their region * Collaborative Special Education Programs in their region * Low Income Communities in their region * ELL Communities in their region * Historically Marginalized Communities in their region |

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.

***Reach out to the mediator who covers your region or to the Coordinator of Mediation to schedule a presentation for your group or to find out about upcoming informational sessions.***

**EVALUATING THE BSEA’S MEDIATION PROCESS**

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 review 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 information 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 periodically 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. The Director shares all substantive Rulings and Decisions issued by BSEA Hearing Officers as they are issued with the Coordinator of Mediation and mediators.

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)

Meetings Pursuant to Mass General Laws chapter 71B, § 2A, the BSEA 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.

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, each fall, 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 related to due process complaints and how many agreements were reached for those cases; how many mediations were not related to 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, 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 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 hearing request (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 hearing request. [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.

***Please reach out to the BSEA Mediator who covers your region or to the Coordinator of Mediation with any questions.***

**MEDIATION AND dese 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 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 with respect to any mediation conducted under the IDEA. 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 PRS. [[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)].

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.

***Please reach out to the BSEA Mediator who covers your region or to the Coordinator of Mediation with any questions.*BSEA FACILITATED TEAM MEETINGS (REMOTE)**

**The BSEA has facilitators 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.

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** |

**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 and cannot 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. The facilitator will not be 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 the meeting to facilitate developing the 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.

**Translation and Interpretation**

The Student’s school district is responsible for providing interpretation and translation services for team meetings.

**Accommodation requests**

To request a reasonable accommodation for a facilitated team meeting, please reach out directly to DALA/BSEA’s ADA Coordinator, Jim Rooney, at [james.rooney@mass.gov](mailto:james.rooney@mass.gov) or at 781-397-4700 (<https://www.mass.gov/info-details/how-to-request-an-ada-accommodation>).

**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 will attend 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, owing to resources and availability, 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 to 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 to schedule at a time a facilitator is available.

**Is there any 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, the District is responsible for:

* Confirming meeting date, time and facilitator contact information with the family.
* Setting up the Remote Meeting Link
* Developing the Meeting Agenda and sharing it with the family.
* Sending out the Meeting Attendance Sheet to the family.
* Arranging 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.
* Chairing the meeting (via the District Team Chair).
* Performing all things it would typically do for any team meeting.

Please reach out with any questions.

As stated, ALL meeting participants will be required to electronically 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.

**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.

**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 this Mediation Guide, “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-1)