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**Utah State Board of Education**

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# **IDEA SPECIAL EDUCATION MEDIATION GUIDE**

A UTAH STATE BOARD OF EDUCATION TECHNICAL  
ASSISTANCE DOCUMENT

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# INTRODUCTION

The purpose of this document is to provide guidance for parents, students who are adults, local education agencies (LEAs), and stakeholders outlining the steps in the Mediation process under Part the B of the Individuals with Disabilities Education Act (IDEA) and the Utah State Board of Education (USB E) Special Education Rules (SpEd Rules).<sup>1</sup>

It is important to note disagreements do happen and can be an opportunity for making improvements for parents, students with disabilities, educators, and LEAs.

*NOTE: This technical assistance document is not intended to provide any legal advice. Please consult with legal counsel about how to proceed in any legal situation.*

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<sup>1</sup> N.B.: Utah Board of Education Administrative Rules (Board Rules) fall under the Utah Admin. Code under title R277. These rules can be found in two places: the [USB E Administrative Rules webpage](#) or the [Utah Office Administrative Rules webpage](#). Therefore, Board Rules R277-609 refers to the same rule as Utah Admin. Code R277-609. Similarly, though the Utah State Board of Education Special Education Rules (SpEd Rules) appear as a separate set of rules distinguished from Board Rules, they are in fact incorporated into Board Rules by reference ([see Board Rules R277-750](#)).

# MEDIATION UNDER THE IDEA

Each LEA, USBE, or other public agency that has the responsibility for the education of students with disabilities must ensure that procedures are established and implemented to allow parties to resolve disputes involving any matter under Part B of the IDEA and the SpEd Rules, including matters arising prior to the filing of a due process complaint, through a mediation process (SpEd Rules IV.F. Mediation).

1. Mediation is a voluntary process that can be used to resolve disagreements between families and schools at any point of special education planning or implementation.
2. Mediation results in a legally binding agreement.
3. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing, State complaint, or civil proceeding of any federal court or State court.
4. Mediation draws on the strengths of both parties to foster mutual problem solving without assigning blame or fault and empowers schools and families to work together to explore issues, make decisions, and design solutions in a confidential manner.

## WHO CAN FILE A REQUEST FOR MEDIATION?

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Parties to a mediation may include the LEA or other public agency and a parent or a student who is an adult to resolve disputes involving any matter under Part B of the IDEA or USBE's SpEd Rules including matters arising prior to or in conjunction with the filing of a State complaint or due process hearing request.

## WHEN SHOULD A REQUEST FOR MEDIATION BE FILED?

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Parents or LEAs may request mediation when they have been unable to resolve their differences after making good faith efforts to resolve their differences. A request for mediation may be filed when the parties cannot resolve their dispute without outside assistance.

Mediation is an early dispute resolution option to address concerns before they rise to the level of a State complaint or due process hearing request. Mediation is an

opportunity to share perspectives and brainstorm self-determined, mutually agreeable solutions regarding issues of concern, with focus on the Student's educational experience.

Mediation can be requested anytime, even if you have already asked for a due process hearing, a written state complaint, or requested IEP facilitation.

## HOW TO FILE A REQUEST FOR MEDIATION

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Mediation can be requested free of charge by submitting the appropriate form to USBE. USBE has a [Request for Mediation](#) form linked here. USBE does not currently accept electronic requests, so the forms must be faxed, mailed, or dropped off to USBE offices in-person.

## WHAT HAPPENS AFTER A REQUEST FOR MEDIATION IS FILED?

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USBE SpEd Rules require that upon receipt of a request for SpEd Mediation, Dispute Resolution Specialists will begin outreach efforts to notify the non-submitting party of the request within three business days.

In the event that both parties agree to SpEd Mediation, the Dispute Resolution Specialists must assign a mediator within five business days of the agreement to SpEd Mediation.

USBE assigns an independent mediator to assist the parties in the mediation process. Mediation is conducted by qualified and neutral mediators trained in effective mediation techniques and knowledgeable about special education, the IDEA, and the SpEd Rules. Mediators are assigned on a random, rotational, or other neutral basis.

## WHAT HAPPENS AFTER USBE ASSIGNS A MEDIATOR?

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Once USBE assigns a mediator, the mediator will be the parties contact for all things relating to the mediation.

# FREQUENTLY ASKED QUESTIONS ABOUT MEDIATION

## DOES THE MEDIATOR MAKE DECISIONS?

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No, the mediator assists the parties in communication and is neutral. The mediator guides the process. In mediation, the parties collaborate to reach an agreement with the assistance of the mediator.

## WHAT IS USBE'S ROLE IN MEDIATION?

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USBE bears the cost of the mediation process, including the costs of meetings. If a party chooses to be represented by legal counsel, they are responsible for their own legal fees.

Utah State Board of Education (USBE) Dispute Resolution Specialists oversee requests for SpEd Mediation and follow them to completion. First and foremost, when USBE receives a request for mediation, USBE's responsibility is to ensure that both parties agree.

## WHAT SHOULD THE LEA DO IF THEY RECEIVE A REQUEST FOR MEDIATION?

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If the SpEd Mediation request was sent to an LEA but not to the USBE, the LEA should contact USBE's Dispute Resolution Specialists and upload a copy to the Utah Program Improvement Planning System (UPIPS) online program or fax it directly to USBE. Next, the LEA should make a decision as to whether the LEA is amenable to mediation. Once a decision is made, reach out to USBE's Dispute Resolution Specialists advising them whether they agree to mediation.

## WHAT SHOULD A PARENT DO IF THEY RECEIVE A REQUEST FOR MEDIATION?

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Parents should make a decision as to whether they would like to participate in mediation and contact USBE's Dispute Resolution Specialists advising them whether they agree to mediation.

## DO I NEED TO HIRE AN ATTORNEY TO FILE A REQUEST FOR MEDIATION?

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No, you do not need to hire an attorney to file a request for mediation. If you have questions about mediation, the [Utah Parent Center](#) is an excellent free resource for families experiencing conflict with local education agencies (LEAs). The [Disability Law Center](#) is also a helpful advocacy resource for Utah families. Both resources may be helpful when filing a request for mediation but are not required.

## WHAT HAPPENS IF THE PARTIES CANNOT AGREE IN MEDIATION?

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The mediator may request that the parties engage in more than one mediation session, or the mediator may declare an impasse meaning that there is no possibility of agreement.

## WHAT ARE THE BENEFITS OF ENGAGING IN MEDIATION?

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First and foremost, a written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

- Mediation can be a timely way of resolving disputes.
- Mediation is less expensive than litigation.
- Preservation of ongoing relationships or termination of relationships on amicable terms.
- Personal empowerment for students with disabilities.

## DOES USBE ENFORCE MEDIATION AGREEMENTS?

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No, the party who is seeking enforcement of a mediation agreement must file a separate case in a State court of competent jurisdiction or in a district court of the United States.

## ADDITIONAL RESOURCES

[Dispute Resolution Video 1](#)

[Disability Law Center](#)