

**Alternative Dispute Resolution
Everyone wins with ADR in Special Education**

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I. What is Alternative Dispute Resolution (ADR) ?

Alternative Dispute Resolution is a way of resolving disputes outside of the formal litigation process.

II. What is Mediation?

A. In mediation, a neutral, impartial mediator assists the parties in reaching their own mutually agreeable solution to the dispute. The mediator has no power to impose a decision on the parties.

B. Mediation is the only method of ADR formally recognized by Individuals with Disabilities Education Act (IDEA) and the Michigan Revised Administrative Rules for Special Education.

C. Confidential

1. Discussions during the mediation process are confidential and may not be used in any subsequent due process hearing or in court.

2. The mediator may not be called to testify regarding matters discussed during mediation.

3. The purpose of confidentiality is to promote the free exchange of information and ideas without fear that it will be used against either party in the future.

D. Voluntary - The parties may choose to or not to participate.

E. Impartial mediator

- 1. Must be a qualified, impartial mediator who is trained in effective mediation techniques.**
- 2. Must be mutually agreed upon by the parties.**
- 3. Must not have a personal or professional conflict of interest.**
- 4. Can not be an employee of any school district.**
- 5. May be the hearing officer if the parties agree.**

F. Must be scheduled in a timely manner at a mutually convenient location and cannot be used to delay or deny the right to due process.

G. Any agreement reached must be set forth in a written mediation agreement.

H. The state must provide the option of mediation, at a minimum, whenever a due process hearing is requested.

III. Why participate in Mediation?

- A. Permits the parties power over the decision making process.**

- B. Provides an opportunity to express interests/concerns directly to each other.**

- C. Facilitates communication, cooperation and joint problem solving.**

- D. Permits the parties who know the child to identify a variety of educational options.**

- E. Frees the parties from the constraints and paperwork of an IEP.**

- F. Promotes more economical and expedient resolutions.**

- G. Encourages innovative and creative solutions.**

- H. Parties are more invested and more likely to comply with an agreement they formulate.**

- I. Teaches negotiation skills that can be used in the future.**

- J. Preserves the parties' relationship by building trust and rapport.**

IV. What should be done to prepare for Mediation?

A. Carefully choose an experienced, knowledgeable mediator.

B. Ensure that key players are available to participate in mediation.

C. Do not include too many participants, especially those unfamiliar with the child.

D. Ensure that there is room for compromise.

E. Ensure that both parties are committed to making a good faith effort to resolve the dispute.

F. Select a mutually convenient time and place.

G. Prepare a clear description of issues/concerns and proposed solution.

V. What happens in Mediation?

- A. The mediator begins by describing the purpose of mediation and the mediator's role in assisting the parties to reach their own decision.**
- B. The mediator will typically explain the importance of confidentiality and may have the parties sign a confidentiality agreement.**
- C. The mediator will familiarize the parties with the ground rules and obtain their commitment to process.**
 - 1. Listen carefully, one person speak at a time, be respectful, speak truthfully.**
 - 2. Commit to resolve dispute if all interests are satisfied.**
- D. Each party will have an opportunity to describe situation from their perspective.**
- E. The mediator helps the parties identify the issues/interests.**
- F. The parties brainstorm potential options.**
- G. The mediator identifies the options the parties agree on.**
- H. The mediator memorializes any agreement in a written mediation agreement.**
- I. Even if only partial resolution, mediation can be helpful in narrowing the issues for hearing.**

VI. What are the Common Myths about Mediation?

- A. It will be misused as a discovery tool.**
- B. It will be used to interrogate an expert witness.**
- C. Information gained will be used against you in the future.**
- D. It will be used as a delaying tactic.**
- E. It will be a waste of time and will not result in any change.**
- F. Others?**

VII. What are some other ADR options?

A. Independent Educational Evaluation (IEE)

- 1. IDEA provides for IEE, at expense of school district, if parent disagrees with the school evaluation.**
- 2. The IEP team must consider the IEE in developing IEP.**

B. Parties can agree to be bound by IEE

- 1. Parties can agree to be bound by an IEE determination regarding eligibility.**
- 2. Parties can agree to be bound by an IEE determination regarding appropriate programming/services.**
- 3. An independent team can resolve multiple issues.**
- 4. Problems with accountability and compliance may arise.**

C. Facilitated IEP- Trained, neutral mediator facilitates the IEP meeting by ensuring that the each participant has an opportunity to be heard and that the meeting remains focused and on track.

D. Arbitration

- 1. An agreed upon neutral third party hears both sides of a case, receives testimony from key witnesses, examines important documents and renders a binding or non-binding decision.**
- 2. The House Bill to reauthorize IDEA includes an option for voluntary binding arbitration in lieu of a due process hearing.**
- 3. It is usually more expeditious and less expensive than traditional due process.**

VIII. What is Due Process?

A. Michigan has a two tier system of administrative review, the local due process hearing and state review.

B. The parties generally must exhaust administrative remedies before proceeding to court.

C. Hearing Rights of Students and their Parents

- 1. Representation by legal counsel or individuals with specialized knowledge.**
- 2. Present evidence, examine and cross-examine, and compel the attendance of witnesses.**
- 3. Prohibit the introduction of any evidence that was not disclosed at least 5 business days before the hearing.**
- 4. Obtain a written transcript, or at the parents' option, an electronic record of the hearing at the district's expense.**

5. A hearing that is open to the public or closed.

6. Reimbursement of reasonable attorney fees and costs if the parents prevail.

D. Notice Requirements

1. When parents request a due process hearing, they must provide the district with certain information regarding their request. The notice must include:

a. Identifying information regarding the child;

**b. A description of the problems with the contested IEP;
and**

**c. A proposed resolution to the extent that it is known
and available.**

2. A court may reduce the amount of attorney fees reimbursed if the attorney representing the parents does not provide the district with the due process notice.

3. When parents request reimbursement for private placement, they must provide the district with notice. Reimbursement may be reduced or denied if the parents do not provide the district with notice of their request for private placement at public expense. They must provide notice:

a. To the IEP team at the IEP team meeting; or

b. Provide written notice 10 business days prior to removing their child from public school.

