Gap Analysis: Dispute Resolution, Mediation

For more information, visit <https://ectacenter.org/topics/gensup/dms-preparing.asp>

# Using this Worksheet

This worksheet is based on the [OSEP Dispute Resolution Mediation Protocol](https://sites.ed.gov/idea/grantees/#DMS,DMS-2), and can help assess your state’s status on the four Overarching Questions included in the protocol. Use this information to identify gaps in your Dispute Resolution system.

# Dispute Resolution: Component Definition

A system required under IDEA and designed as part of a State’s general supervisory responsibility to ensure implementation of IDEA’s dispute resolution procedures (State complaints, mediation, and due process complaints and due process hearings, including the resolution process required under Part B), consistent with IDEA requirements.

# Instructions

Compile, organize, and make accessible to team members all written documents, including internal and public-facing policies and procedures, for each system assessed. Then, use the gap analysis worksheet to review each overarching question's Protocol Items and complete the following:

* Use the Systems Overview developed in **Step 3** to identify current policies, procedures, and practices related to each Protocol Item.
* Determine if what you are doing aligns with the foundational information in **Step 4**.
* Determine if what you are doing (or need to do) is described in your written procedures. Record the document and page number or section where this information can be found.
* Determine and record a status code: 1, 2, 3, or 4.
* Note anything missing or that needs modification.
* Document your key conclusions for the overarching question.

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| --- | --- |
| Status Code | Definition |
| 1 | We are doing it correctly and it is documented. |
| 2 | We are doing it correctly, but it needs to be documented. |
| 3 | We are doing some of it, but not all of it, and documentation needs to be developed or modified. |
| 4 | We need to give this item a lot of attention. |

# Overarching Questions

1. How does the State ensure that parties to disputes involving any matter under Part B or Part C of IDEA, including matters arising prior to the filing of a due process complaint, can resolve disputes through a mediation process?
2. How does the State ensure that parents and others have access to general information about the State complaint procedures under IDEA Part C?
3. What are the State’s requirements for filing and accepting a State complaint?
4. What are the State requirements regarding the scope of allegations and relief that may be included in a State complaint?

## **A.** How does the State ensure that parties to disputes involving any matter under Part B or Part C of IDEA, including matters arising prior to the filing of a due process complaint, can resolve disputes through a mediation process?

* [34 CFR §300.300 — Parental consent](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1300&rgn=div8)
* [34 CFR §300.506 — Mediation](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1506&rgn=div8)
* [34 CFR §303.431 — Mediation](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1431)
* [OSEP Memo 13-08 and Q&A on Dispute Resolution](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (Questions A-4 and A-6)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | Parties may request mediation to resolve disputes about any matter under Part B or Part C of IDEA. LEAs, however, may not use mediation to:1. override a parent's failure to respond to a request for, or refusal to consent to, the initial provision of special education and related services; a parent's revocation of consent for the continued provision of special education and related services;
2. a parent's refusal to consent, or failure to respond to a request to provide consent, to an initial evaluation or reevaluation of a child who is home schooled or parentally-placed in a private school at parental expense.
 |  |  |  |
| 2 | Mediation must be made available to parents and public agencies. |  |  |  |
| 3 | Each public agency must ensure that procedures are established and implemented to allow parties to resolve disputes through a mediation process involving any matter under Part B or C, including matters arising prior to the filing of a due process complaint. A State must not require a due process complaint to be filed before a party can request mediation. This requirement should be explained in the procedural safeguards notice distributed to parents. |  |  |  |
| 4 | The State must bear the cost of the mediation process. |  |  |  |

### Possible Follow-Up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 5 | What are the procedures for requesting mediation? |  |  |  |
| 6 | How does the State ensure that parents are informed of their right to request mediation through its prior written notice policy and procedures? |  |  |  |
| 7 | How does the State promote the mediation process in the State?  |  |  |  |
| 8 | Who may request mediation? |  |  |  |
| 9 | How often is mediation requested? |  |  |  |
| 10 | What are the types of issues that can be the subject of mediation?  |  |  |  |
| 11 | What is the State's process for handling a mediation request once the request is received? |  |  |  |
| 12 | Are there time limits around mediation (e.g., for a party to request mediation on a dispute, for the other party to respond whether it agrees to participate in mediation, etc.) |  |  |  |
| 13 | Does the State have a timeline in which it must respond to a mediation request? |  |  |  |
| 14 | How does the State ensure that mediation is available regardless of whether a parent or LA has filed a due process complaint? |  |  |  |
| 15 | How does the LA make mediation available when a parent files a State complaint?  |  |  |  |

### Key Conclusions

## **B.** How does the State ensure that parents and others have access to general information about the State complaint procedures under IDEA Part C?

* [34 CFR §300.506 — Mediation](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1506&rgn=div8)
* [34 CFR §303.431 — Mediation](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1431)
* [OSEP Memo 13-08 and Q&A on Dispute Resolution](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (Questions A-23 and A-25)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | Mediation is voluntary for both parties. |  |  |  |
| 2 | All discussions that occur in mediation are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.  |  |  |  |
| 3 | Confidentiality provisions must be included in any legally binding agreement signed by the parties.  |  |  |  |

### Possible Follow-Up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 4 | How often do the EIS providers voluntarily engage in mediation? |  |  |  |
| 5 | What happens when EIS providers do not respond to a mediation request? |  |  |  |
| 6 | How are the confidentiality protections enforced during mediation?  |  |  |  |
| 7 | Does the State ask parties to sign a confidentiality pledge as a condition for starting mediation? If so, what happens if a party refuses to sign? |  |  |  |

### Key Conclusions

## **C.** What are the State’s requirements for filing and accepting a State complaint?

* [34 CFR §300.506 — Mediation](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1506&rgn=div8)
* [34 CFR §303.431 — Mediation](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7b5816d51031b6457afd799fa775e86f&mc=true&r=SECTION&n=se34.2.303_1431)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | Mediators must be trained in effective mediation techniques.  |  |  |  |
| 2 | Mediators must be qualified and demonstrating knowledge in laws and regulations relating to early intervention services for Part C. |  |  |  |
| 3 | Mediators must be selected on a random, rotational, or other impartial basis. |  |  |  |
| 4 | Allowing parties to select the mediator from the list is permitted as an "other impartial basis." |  |  |  |
| 5 | Mediators may not be employees of the LA or the EIS provider that is involved in the care of the child or employees of the LA or EIS provider that is involved in the provision of early intervention or other services to the child for Part C; and must not have a personal or professional interest that conflicts with the person's objectivity. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 6 | How does the State maintain the list of mediators? |  |  |  |
| 7 | What are the State's requirements for mediators to be included on its list (e.g., qualifications)? |  |  |  |
| 8 | What training is provided to mediators?  |  |  |  |
| 9 | How does the State ensure impartiality of mediators? (Do they also serve as hearing officers? If yes, how does the LA ensure that, if the matter proceeds to a due process hearing, a different hearing officer conducts the hearing?) |  |  |  |
| 10 | How are mediators assigned to particular cases? |  |  |  |
| 11 | What happens if a party questions the impartiality of a mediator? |  |  |  |
| 12 | How does the State evaluate its mediators? |  |  |  |

### Key Conclusions

## **D.** What are the State requirements regarding the scope of allegations and relief that may be included in a State complaint?

* [34 CFR §300.506 — Mediation](https://www.ecfr.gov/cgi-bin/text-idx?SID=eaa7fb6bd912a0e95a538b0db5a047f1&mc=true&node=se34.2.300_1506&rgn=div8)
* [34 CFR §300.537 — State enforcement mechanisms](https://www.ecfr.gov/cgi-bin/text-idx?SID=9237f378c4d4e1ec4f7278d3efc460f2&mc=true&node=se34.2.300_1537&rgn=div8)
* [34 CFR §303.431 — Mediation](https://www.ecfr.gov/cgi-bin/text-idx?SID=289ad0d93926b8b560b9cb265762eb4b&mc=true&node=se34.2.303_1431&rgn=div8)
* [34 CFR §303.449 — State enforcement mechanisms](https://www.ecfr.gov/cgi-bin/text-idx?SID=289ad0d93926b8b560b9cb265762eb4b&mc=true&node=se34.2.303_1449&rgn=div8)
* [OSEP Memo 13-08 and Q&A on Dispute Resolution](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (Questions A-27 and A-28)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that is signed by both the parent and a representative of the agency who has the authority to bind such agency.  |  |  |  |
| 2 | A written, signed mediation agreement under Part C of IDEA is enforceable in any State court of competent jurisdiction or in a district court of the United States. |  |  |  |
| 3 | States have flexibility to allow enforcement of written mediation agreements through other State mechanisms, such as through their State complaint procedures. |  |  |  |
| 4 | If applicable, such State enforcement mechanisms must be established in policy/procedure to ensure consistent implementation. |  |  |  |
| 5 | If the mediation agreement covers a specific time period and that time period has passed, the parent may file a State complaint if the issues that were the subject of the mediation agreement recur or if new issues arise.  |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 6 | What happens if the public agency does not send a representative with decision-making authority to the mediation?  |  |  |  |
| 7 | How are mediation agreements enforced in the State? |  |  |  |
| 8 | In addition to a civil action, does the State offer any other mechanism to enforce mediation agreements? If so, please describe those procedures. |  |  |  |
| 9 | Does the enforcement of a mediation agreement limit a parent's right to file a future State complaint?  |  |  |  |
| 10 | Describe how the LA uses information from its mediation system as part of its general supervision system.  |  |  |  |

### Key Conclusions

## Additional Questions for Consideration on Improving Results

### Does the State evaluate its mediation process?

### What steps has the State taken to improve its mediation system?

### Has the State highlighted the mediation process on any national calls or training conferences?

### What actions has the State taken to promote its mediation process as an effective method of dispute resolution? For example, has the State undertaken any activities to build confidence in its mediation process?

### How does the State address EIS providers that consistently refuse to participate in mediation?





This worksheet was adapted by ECTA and CADRE from the *DMS Protocols Adapted for TA Centers Use–Dispute Resolution: State Complaints*, developed by the National Center for Systemic Improvement (NCSI).

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