

PaTTAN Coffee Hour with the PA Office for Dispute Resolution



Session Features

- Check out ODR resources and services including facilitation and mediation.
- Review process options that prioritize sustainable results AND trustworthy relationships.
- Chat about how and when to seek ODR support to improve relationships and restore trust, communication, and collaborative decision-making while centering the student.

PA Office for Dispute Resolution



- Administrated from Harrisburg with contract mediators throughout the state
- Funded by the Department of Education (PDE) to meet federal requirement of having due process and mediation available to parents and local education agencies (LEAs)
- Provides other non-mandated dispute resolution services

ODR Philosophy

The PA Office for Dispute Resolution (ODR) offers families and educators alternatives to due process hearings with less formal process options like facilitated IEPs / GIEPs, mediation and settlement conferences.

Our goal as neutral third parties is to empower people in conflict to improve relationships while restoring trust, communication and collaborative decision-making, all while keeping the student centered in the dialogue moving forward.



While due process hearings are an important protection, they can be costly, time consuming, and contentious, and can damage relationships between families and educators.



Even when the parents/guardian and schools try their best to reach agreement on a student's special education program, disagreements can occur.

If this happens, mediation, which is a free, voluntary, and confidential alternative to a formal due process hearing, is an option. Mediation can take place at any time before or during the due process cycle. Mediation is not a required process and may not delay or deny a parent/guardian the right to a due process hearing.

<https://odr-pa.org/>

PA ODR Services

Mandated Services:

- Mediation
 - Due Process Hearings
-

Mediation is part of a parents' Procedural Safeguards / The rights parents have that are written in the Individuals with Disabilities Education Act or IDEA.

Non-Mandated Services:

- ❖ Special Education ConsultLine
- ❖ IEP/IFSP Facilitation
- ❖ Facilitative & Evaluative Mediation
- ❖ Resolution Meeting Facilitation
- ❖ Creating Agreement Training
- ❖ HO Settlement Conference
- ❖ Parent/Family Engagement Project

Mediator Requirements

- **Independent, experienced contractors** with backgrounds as attorneys, practitioners, consultants, former educators, therapists, and faculty.
- **Prerequisite training** in mediation + a working knowledge of special education laws and regulations.
- **Neutral third party** who is not an employee of the agency involved in the education or care of the child and does not have a personal or professional conflict of interest.

www.odr-pa.org/mediator-biographies/



Exemplar State

Pennsylvania is one of four states selected by **The Center for Appropriate Dispute Resolution in Special Education (CADRE)** as an “exemplar state” in the area of special education dispute resolution.



www.cadeworks.org/resources/cadre-materials/exemplar-state-profiles

Responsiveness to Changing Needs

NEW Pandemic Protocols

Improved Resources and Web /
Social Media Presence

Attorneys at Mediation

Pre-mediation Caucuses

Facilitative & Evaluative
Mediation Options



Mediation Process

1. **Introductions, Orientation & Paperwork Review.**
2. **Uninterrupted Time for Opening Remarks** during which participants share issues and hoped for outcomes.
3. **Joint Dialogue** follows as parties clarify shared issues and work towards creative brainstorming and solutions.
4. **Agreement Writing / Signed Agreement** that resolves some or all issues raised today is often the result of mediation.
5. **Caucuses & Breaks** may be taken as requested.

Ground Rules (Shared Expectations)

1. Work together as a student-centered, collaborative team.
2. Focus on present concerns and solutions rather than past problems.
3. Share information openly and listen patiently. Treat each other with respect.
4. Help create options, resolve issues and respect different interests.
5. Work in good faith to abide by a mediated agreement and/or IEP.
6. Understand that combative participants may be asked to leave.
7. Respect the nature of the discussion as private/confidential.
8. Not call the mediator as a witness in legal proceedings.
10. Not record the session (and turn phone ringers off).
11. A copy of an agreement will go to ODR. Another goes in student's file.

Working Towards Common Ground

Position: You DO NOT CARE ABOUT MY CHILD! You withheld promised services and they have made NO progress!

We DEMAND a new evaluation and private district-funded placement or else DUE PROCESS!

Underlying interests, needs, identities, traditions, experiences, emotions, hopes and fears that orient a set of beliefs and values.

Position: We DO CARE ABOUT THIS STUDENT! We did not withhold services and they are making data-based progress!

We WILL NOT re-evaluate and cannot fund private placement! We can serve this student in district!

Underlying interests, needs, identities, traditions, experiences, emotions, hopes and fears that orient a set of beliefs and values.

Building empathy, identifying issues and finding common ground yields inclusive sustainable win-win results and protects future oriented trustworthy relationships.

Working Towards Common Ground

YOU DO NOT CARE



**We all care and have different points of view.
Tell us how you see it and we will listen.**

We agree that OT fell short when the provider left. We are sorry and frustrated too. Let's think about ways to make up lost time.

What new information related to evaluations and private placement can we exchange to understand interests and inform next steps?

When can we schedule an IEP meeting to incorporate new OT services, related goals and decide how to track progress?

Building empathy, identifying issues and finding common ground yields inclusive sustainable win-win results and protects future oriented trustworthy relationships.

Mediation Agreement

Mediation to Find Common Ground



- ✓ Discussion will remain confidential.
- ✓ The agreement is legally binding and enforceable.
- ✓ Parties agree to abide by and fulfill the agreement.

1. Parties agree that OT will resume for the 2021-2022 school year 3x per week for 20 minutes per session.
2. The District agrees to fund 10 hours of OT over the summer.
3. The family and director of special education will visit Future Interest Academy on April 1, 2022 at 10 a.m.
4. The IEP Team will meet on May 4, 2022 to review progress and revisit a request to re-evaluate ...

Why Mediation

- ✓ Mediation is **voluntary**. All rights and responsibilities under special education law, such as the right to due process, stay in place.
- ✓ **ODR arranges time, date and place** of the mediation, assigns mediator and pays mediator fees and expenses
- ✓ Mediation is **an inclusive process that empowers parties** to build sustainable future results and relationships **while centering the student**.
- ✓ Agreements are binding and often more satisfying than due process outcomes.
- ✓ Focuses on mutual-problem solving, is less stressful, less expensive, and less time-consuming than a hearing.

Mediation vs Due Process

	Mediation	Due Process
Time	Usually scheduled w/in 10 days. Reserve full day but sessions often last 3-5 hours and rarely require more than one session.	May require several sessions. Prep of witnesses and evidence can be time-consuming for all.
Cost	ODR pays fees. Advocates or experts paid by inviting party. Attorneys may participate.	Often take several sessions and usually include attorney fees and/or expert witness fees.
Outcome	Mediators do not decide outcomes. They facilitate collaborative problem solving and relationship building to help parties reach agreements.	Decisions are imposed by the hearing officer and while binding, may not satisfy either party or help rebuild trust and relationships.

Choosing Between Process Options



Facilitation

Full IEP team collaboration is needed to get past stuck-ness.

Priority is to work together to complete the IEP.

Parties are in an ongoing relationship on behalf of a student.



Mediation

A smaller group of key stakeholders may be useful.

Parties favor a neutral third party leading the meeting agenda.

Option of creating a binding written agreement is appealing.



Due Process

Results are more important than relationships.

Precedent setting is preferred over confidentiality.

Parties seek to address injustice or recoup monetary damages.

What issues can be mediated?

Special Education Mediation is available for issues that arise under IDEA, Section 504 of the Rehabilitation Act and the PA Regulations regarding Gifted Education.

- FAPE → Placement
- LRE → Least Restrictive Environment
- IEP Implementation
- Related Services/level of services
- Extended School Year
- Evaluations and/or Functional Behavioral Assessments
- Transitions
- Accommodations



Types of Conflicts & Consultline Calls

Compliance: “My child’s IEP is not being followed. What can I do?”

Rights : “My district said my child is not eligible for an GIEP and I disagree with them. I want a second opinion.”

Process: “I think my child needs an IEP; how do I ask for an evaluation?”

Disagreement: “I don’t think my child ‘s GIEP is meeting their needs. What are my options?”

Materials and Resource Requests: State forms; publications; referrals to Parent Training and Information Center (PTIC) or other public agency.

Bullying – “My child has Asperger’s Syndrome and is being bullied on the playground.”

Section 504 - “My child doesn’t need an IEP but has ADHD and I think it’s affecting his/her ability to follow directions and complete assignments on time.”

Whether COVID was listed as an issue or not, there was little change from FY 19-20 in the issues addressed at mediation by age group:

Table 7: Top Issues Addressed at Mediation by Age Group

Birth_3	
Issues	Occurrence in Mediations
Related Services	1
Placement	1
3_5	
Issues	Occurrence in Mediations
Related Services	22
Placement	18
IEP	10
School Age	
Issues	Occurrence in Mediations
Related Services	125
Placement	125
IEP	89
Section 504	
Issues	Occurrence in Mediations
Service Agreement	6
Related Services	2

***Compensatory Education * IEP Disputes
* Placement * Evaluation**

Due Process

Due Process Issues

The top three issues for each age group and category are as follows:

Table 15: Top three issues for each age group and category

3-5	
Issues	Occurrence in Due Process
Compensatory Education	13
IEP	9
Related Services	8
School Age	
Issues	Occurrence in Due Process
Compensatory Education	450
IEP	358
Evaluation	180
Gifted	
Issues	Occurrence in Due Process
GIEP	3
Eligibility	2
Student Records	2
Section 504	
Issues	Occurrence in Due Process
Compensatory Education	2
Service Agreement	1
ADA/Section 504	1

Benefits of Mediation

Mediation can help everyone better understand differing points of view.

Participants work on solutions together and are in control of the outcome, rather than someone who doesn't know the child making a decision.



Benefits of Mediation



People are more satisfied and follow through with the terms of mediated agreements because they are developed together.

Disagreements may be resolved more quickly and less contentiously than with other dispute resolution options.

Mediation focuses on creating a plan for the future and living into a better relationship.

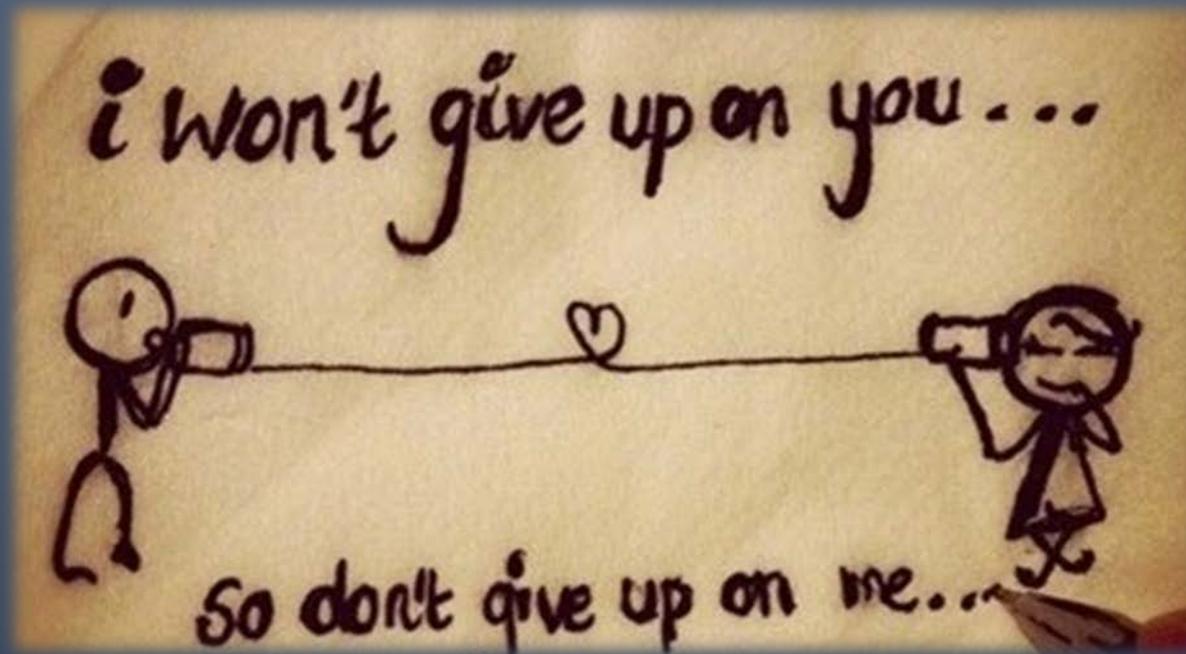
Why Mediation

While facilitative style mediation often helps parties write an agreement, our commitment as neutral (multi-partial) third parties is to empower people in ways that improve relationships and restore trust, communication and collaborative decision-making.

“I’m never going to write a better due process decision than a mediation or settlement agreement.”

Brian Jason Ford, ODR Hearing Officer

COLLABORATION = RESULTS + RELATIONSHIPS



Sense of the Room

What is in the Way of You
and Mediation?



1. Lack of Awareness?
2. Resources Not User Friendly?
3. Perceived Lack of Skills?
4. Distrust between Parties?
5. District Culture?
6. Bad Past Experience?
7. Feels Like Over-Escalation?
8. Fear Loss of Power/Control?
9. Awkward to “Air Dirty Laundry”?
10. Time & Resource Expenditure?
11. Something else?

Who Can Help?



A Family Resource Specialist at the PEAL Center may be able to help family members understand the mediation process.

info@pealcenter.org or 866-950-1040



ODR Consultline is also a resource that supports parties and answers questions.

consultline@odr-pa.org or 800-879-2301

www.odr-pa.org

Additional ODR Resources



ODR has extensive resources on www.odr-pa.org, including videos, guides, and request forms.



The Annual Reports provide statistics on our services as well as information about projects ODR is working on.



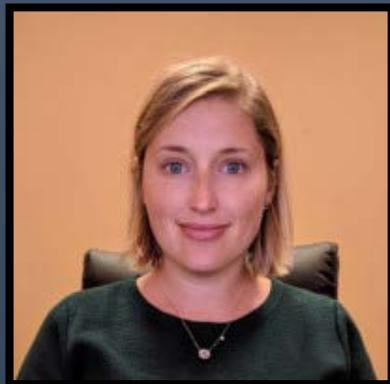
The *For Parents* section was developed specifically with parents/guardians in mind and includes a *Parent Resource Library* with information on special education topics.



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More Resources

ODR - www.odr-pa.org

FAQ for Pendency

Mediation Brochure

Mediation Request Form

Mediation video

CADRE - www.cadeworks.org

Mediation Brochure

Mediation videos

PaTTAN - www.pattan.net

PaTTANpod

Annotated NOREP/PWN

PEAL - www.pealcenter.org

Resolving Disagreements

Parent Guide to Dispute

Resolution Processes

Six Steps of Responding

to Conflict Constructively

Rights Done Right-

Mediation

