

Q&A: Mediation

What is mediation?

Mediation is a process that helps two sides who disagree about an issue reach an agreement. It utilizes a third party that is not on either side to help the two sides reach an agreement.

What types of disputes can be mediated?

Mediation is available for a variety of issues, including but not limited to:

- Special education
- Housing discrimination
- Employment discrimination
- Public access discrimination
- Division of Vocational Rehabilitation (DVR) services

Who can request mediation and when?

It depends where you are requesting mediation from, but typically mediation can be requested by any party at any time, without filing a formal complaint. Mediation can also be requested after a formal complaint is filed, and there are some entities in which you need to file a complaint before mediation becomes an option. It is best to check with the applicable entity for the most accurate information. You should also be aware of any timelines for filing complaints in case mediation does not work out. If you fail to file a complaint before a deadline and mediation is unsuccessful, you could lose the ability to file a formal complaint.

What are the possible benefits of mediation?

- Parties have more control over the outcome.
- There is room for creativity in reaching a solution.
- There are many entities that provide mediation services free of charge.
- Mediation is private and confidential.
- The neutral mediator will help guide you through the issues at hand.
- Issues can be resolved more quickly.
- You do not necessarily need an attorney for this process.
- Any complaints already filed may continue if mediation is unsuccessful.

What are the possible negatives of mediation?

- There is no guarantee of a resolution.
- There will not be a formal finding of whether legal violations happened.
- Settlement agreements almost always include a statement acknowledging that there is no admission of wrongdoing and a non-disparagement clause, meaning you cannot tell anyone about the conflict that led to the mediation, or you will face potential penalties.
- Many settlement agreements require confidentiality through a non-disclosure agreement.
- Both sides are often settling for less than they would want in an ideal situation.
- If there is money included in the settlement, there may be tax or other financial implications, such as eligibility for certain programs. This is true for any financial settlement and award, not just in mediation.

How does mediation work?

After requesting mediation, ***if both parties agree to the process***, a mediator will be assigned and work with the parties to schedule mediation. Mediations should take place in a location convenient to the parties, but some mediations are done on the phone or virtually through an online meeting platform. Mediation may take a few hours or a full day depending on the issues. Once at mediation, the structure and flow will depend on the mediator, but typically the parties will introduce themselves, clarify any issues if necessary, and then go to separate rooms. The mediator often then goes back and forth between the rooms to speak with each party separately. This is called a “shuttled mediation.” In some circumstances, the mediator may put the parties in the same room. The mediator will help the parties brainstorm options to see if a solution can be identified. If a solution is reached, the mediator will assist the parties in preparing a settlement agreement to be signed by both parties. If either party has an attorney, the attorney generally drafts the agreement.

How do I prepare for mediation?

Know your argument about how the other side violated the law. It is important to go into mediation with an idea of what you want to ask for. What you should ask for depends on the issue and the circumstances. Many people ask for the other party to stop violating the law, training for staff who violated the law, a change in policies, a school to make up hours of instruction, or money. If you are asking for money, it is important to consider what money you lost by the other sides’ illegal action. This could be for lost work hours, having to get more expensive services somewhere else, or even for money spent on therapy due to the action of the other side. If you receive Medicare or Medicaid and you get money from a settlement that is to pay you back for services you received through Medicare or Medicaid you have to report that to the state, and may need to pay the state back for the money they spent that you received in the settlement.

Who decides the outcome?

The parties to mediation mutually decide on the outcome, meaning that if either side does not agree there is no resolution or settlement. The mediator is a neutral third party there to assist the parties in reaching a resolution, but ultimately, the parties must either come to a mutually agreed upon written settlement agreement or decide that they are unable to reach a resolution.

What happens if we do not reach a resolution in mediation?

If no agreement is reached, parties have not waived any of their rights and may proceed with other methods of resolving the issue. If a complaint has already been filed and mediation regarding the complaint is unsuccessful, the complaint process will continue once mediation is completed.

Is there an appeal process?

A written settlement agreement signed by both parties during a mediation is legally binding. If a party believes that the other party is not meeting the terms of the written settlement agreement, that party may seek enforcement of the agreement in state or federal court. Some processes allow for revisiting the original complaint if a settlement agreement is breached.

Where can I go for more information?

- [Mediation with the Colorado Department of Education](#)
- [Mediation with the U.S. Equal Employment Opportunity Commission](#)
- [Mediation with the Colorado Civil Rights Division](#)
- [DVR Services Handbook](#)
- [Mediations with the Office of Administrative Courts](#)
- [Mediation with the Colorado Judicial Branch](#)
- [Article II of the Office for Civil Rights Case Processing Manual](#)
- [DOJ ADA Responsibilities: ADA Mediation Program](#)