

FAQs ABOUT MEDIATIONS UNDER THE LANTERMAN DEVELOPMENTAL DISABILITY SERVICES ACT AND THE EARLY START LAW

What is Mediation?

Mediation is a voluntary and confidential meeting that takes place prior to the formal fair hearing. The two parties agree to work with a mediator to try to resolve the case without going to hearing. Because it is a voluntary process, both parties must agree to participate in mediation before mediation will be scheduled. If one side refuses to participate in mediation it will not be scheduled.

Who will be at the Mediation?

There are usually two representatives from the regional center, one or more for the claimant/petitioner, and the mediator.

Who will be the Mediator?

The mediation will be conducted by an administrative law judge of the Office of Administrative Hearings trained and experienced in conducting mediations. To protect the confidentiality of the process and to encourage free discussion, the mediator will not serve as the ALJ who hears the cases should it proceed to a fair hearing.

Do I need an Attorney?

An attorney is not required but you may bring one should you choose to do so. Some regional centers send an attorney to the mediation as a matter of course, others do not.

You may also have an authorized representative of your choice. For further information about assistance with the mediation and/or hearing, please contact your local OAH office for phone numbers of agencies who may assist you such as Office of Clients Rights Advocacy and Area Boards.

What if I need a Translator?

A translator will be provided for you. You must request a translator through the OAH Calendar Clerk at (916) 263-0550. You should make your request as soon as you can as it takes time to arrange for interpreters.

How Are Mediations Scheduled?

The OAH Calendar Clerk chooses the date for the mediation. You may request a continuance if you are not available on the scheduled date. A continuance form is available on the OAH Website, www.oah.dgs.ca.gov. You may be asked to sign a waiver of time so the continued mediation date may take place beyond the statutory time limits.

What Should I Do Before The Mediation?

Prepare. Prepare. Prepare. Jot down notes on your facts and on your issues. Be prepared to explain to the mediator and the other party the reasons you believe your position is correct. Be clear in your own mind about what you are seeking to accomplish in mediation.

What Should I Bring With Me?

All relevant information you have in connection with your case.

An open mind. You may learn things in mediation that might cause you to change your position. Be open to considering other options to resolve the dispute.

Someone with authority to settle the case. If you do not have authority to enter into a mediated agreement, make sure you have the ability to be in telephone contact at all times with someone who does.

Bring paper and a pen.

Bring water and a snack.

How Will The Mediation Proceed?

After introductions, the mediator will review grounds rules, discuss confidentiality, and ask the parties to sign a confidentiality agreement. Each side will be asked to summarize their position. The mediator may ask questions to clarify the issues.

The group may remain in joint session to discuss issues, or break into caucuses. In a caucus, the mediator meets with each side separately. The mediator will keep information learned in caucus confidential unless given permission to disclose it.

Be prepared to wait while the mediator is in caucus with the other side. The mediator may give you a task to complete while in caucus with the other party. Be patient – mediations, and in particular this part of the process, takes time.

If an agreement is reached, the mediator will prepare a written document that incorporates the terms of the agreement. The parties are given the opportunity to make suggested changes before it is prepared in final form. The parties will be given a copy of the agreement for their records. A copy of the agreement will be provided to the Department of Developmental Services.

What Happens If We Run Out Of Time?

If the parties agree, a further mediation date will be set. You may be asked to sign a waiver of time so the additional mediation date can be set beyond the statutory time limits.

If the parties do not agree, the matter will go forward to hearing.

What Happens To The Hearing Date?

If the mediation leads to an agreement, the hearing date is taken off calendar.

If the mediation does not lead to an agreement, the hearing date remains as set on calendar. Discuss any concerns you have about the hearing date with the mediator.