

281—120.431(34CFR303) Mediation.

120.431(1) General. The department must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

120.431(2) Requirements. The procedures must meet the following provisions:

- a. The procedures must ensure that the mediation process:
 - (1) Is voluntary on the part of the parties;
 - (2) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
 - (3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- b. The department must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. The department must select mediators on a random, rotational, or other impartial basis.
- c. The department must bear the cost of the mediation process, including the costs of meetings described in subrule 120.431(4).
- d. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- e. 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:
 - (1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
 - (2) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.
- f. A written, signed mediation agreement under this subrule is enforceable in any state court of competent jurisdiction or in a district court of the United States.
- g. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under Part C of the Act.

120.431(3) Impartiality of mediator.

- a. An individual who serves as a mediator under this chapter:
 - (1) May not be an employee of the department or an EIS provider that is involved in the provision of early intervention services or other services to the child; and
 - (2) Must not have a personal or professional interest that conflicts with the person's objectivity.
- b. An individual who otherwise qualifies as a mediator is not an employee of the department or an early intervention provider solely because the individual is paid by the agency or provider to serve as a mediator.

120.431(4) Meeting to encourage mediation. The department may establish procedures to offer to parents and EIS providers that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

- a. Who is under contract with an appropriate alternative dispute resolution entity or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the Act; and
- b. Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

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