

The following chart compares and contrasts Mediation and Due Process Hearings. This chart is adapted from Art Stewart, Virginia Department of Education.

Mediation and Due Process Hearings: A Comparison

Mediation	Due Process Hearings
<u>Goal:</u> Achieve resolution of disputed issues	<u>Goal:</u> Achieve resolution of disputed issues
<u>Initiator of Dispute:</u> Parent	<u>Initiator of Dispute:</u> Parent
<u>Mediator:</u> impartial individual who is a trained mediator; Certified by the Supreme Court of Virginia to mediate Special Education cases; trained on the Individuals with Disabilities Education Improvement Act (IDEIA), Part B by the Office of Dispute Resolution and Administrative Service through Virginia's Department of Education; and trained on the Individuals with Disabilities Education Act (IDEA), Part C by the Procedural Safeguard Consultant within the Infant & Toddler Connection of Virginia Part C Office	<u>Due Process Hearing Officer:</u> impartial individual who is a lawyer and/or judge, certified by the Supreme Court of Virginia to preside over due process cases, trained on the Individuals with Disabilities Education Improvement Act (IDEIA), Part B by the Office of Dispute Resolution and Administrative Service through Virginia's Department of Education; and trained on the Individuals with Disabilities Education Act (IDEA), Part C by the Procedural Safeguard Consultant within the Infant & Toddler Connection of Virginia Part C Office
<u>Issues to be mediated</u> may be about any matter in proposals to initiate or change the identification, evaluation, or educational placement of a child with a disability or the provisions of FAPE to the child. Also, may be about refusals to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child with a disability. See, 34 CFR §§ 300.506, and 300.507.	<u>Issues to be heard in a Due Process Hearing:</u> may be about any matter in proposals to initiate or change the identification, evaluation, or educational placement of a child with a disability or the provisions of FAPE to the child. Also, may be about refusals to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child with a disability. See, 34 CFR §§ 300.506, and 300.507
<u>Purpose:</u> The mediator uses an informal process to assist parties through their negotiations and planning to an outcome they themselves determine. Mediation is voluntary throughout the entire process, but both parties must agree to mediation.	<u>Purpose:</u> The hearing officer uses a formal process requiring presentation of evidence, sworn testimony, and cross-examination to determine facts, which help him/her to form a conclusion. The officer then makes a decision for the parties. Once one party has initiated the process, all necessary parties must participate.
<u>History:</u> The mediator encourages parties to focus on the child's current skills and needs as a foundation for exploring the possibility of an agreement	<u>History:</u> The hearing officer is likely to hear and consider more detailed history, especially with regard to procedural violations or failure to school staff or parent to fulfill their obligations in the past
<u>Intervention Style:</u> The mediator may intervene to guide parties in discussion, to clarify what is intended, to elicit parties' best thinking, to maintain a civil process to reframe important questions in a way that engages people.	<u>Intervention Style:</u> The hearing officer must maintain control of the hearing environment while ensuring that parties are permitted to present their cases and must have on the record the evidence necessary to decide the case.
<u>Preparation:</u> Parties need to think about the	<u>Preparation:</u> The requirements for preparation are

Mediation	Due Process Hearings
<p>student's current performance, progress and any need for special support or instruction. The requirement for preparation is not exhaustive and is orientated toward the present.</p>	<p>exhaustive. Representative for parent and the school must be able to marshal all evidence, prepare witnesses to testify, fully inform the hearing officer and create a record for appeal, if necessary</p>
<p><u>Resources:</u> The resources required for this effort are the 2-3 hours spent by the parties and mediator to identify and work on the issues they wish to resolve.</p>	<p><u>Resources:</u> The resources required for a hearing include the costs of representation; the time and cost of preparation and the several days parties typically spend at the hearing.</p>
<p><u>Parties' relationship:</u> The mediation is an assisted negotiation. The mediator will try to maintain or restore a working relationship between the parent(s) and school staff in order to help them to complete their negotiations and planning process successfully.</p>	<p><u>Parties' relationship:</u> The hearing officer will try to minimize the acrimony and tension at the hearing, but much of it is inherent in an adversarial proceeding. Parties cross-examine each other, challenge each other's credibility and competence.</p>
<p><u>Private discussion:</u> The mediator will meet with parties together and in separate private discussions in which parties may make statements that are later held confidential.</p>	<p><u>Private discussion:</u> No ex parte or private discussions may occur between parties and the hearing officer. The decision is based on the record of documents and testimony.</p>
<p><u>Confidentiality:</u> The comments and offers made during mediation sessions are confidential and cannot be used in another forum.</p>	<p><u>Confidentiality:</u> The record of the hearing is confidential but will be used if the case is appealed to a court of law. Due process hearings may, under certain conditions, be open to the public. In addition, the public agency, after deleting any personally identifiable information, shall make due process hearing findings and decisions available to the public.</p>
<p><u>Sources of Information:</u> The mediator relies on the verbal statements of the parties as the primary source to inform each other and him/herself about the child's program, their concerns and aspirations, and the goals, interests and choices before them. The Mediation Agreement signed by both parties is binding and more difficult to appeal under most States' contract law.</p>	<p><u>Sources of Information:</u> The hearing officer relies on documentary evident and testimony, and assesses the credibility of witnesses and expert opinions, especially the diagnostic, evaluative and testing qualifications of professionals involved in evaluating a student and delivering services. The hearing officer is required to make conclusions of fact and law and to render a legal judgment that includes the specific remedies. The decision of the hearing officer in a due process hearing is binding, unless appealed</p>
<p><u>Skills of the mediator:</u> The mediator prepares people for the mediation and guides them through it in ways that contribute to a successful negotiation, employing interpersonal facilitative and cognitive skills. The mediator must be knowledgeable about the legal standards in special education issues.</p>	<p><u>Skills of the Hearing Officer:</u> The hearing officer's role is to conduct a fair and orderly hearing, to inform him/herself, to rule on evidence, and to develop the record. Outside the hearing, the officer weights evidence and writes a logical persuasive, and legally defensible decision. Knowledge of the law is essential.</p>