



EARLY CARE & EDUCATION LAW UNIT

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MEDIATION VS. LITIGATION: THINGS TO CONSIDER BEFORE GOING TO COURT

As the owner and operator of a child care business, it is likely that a problem will arise that will cause you to consider taking legal action. The problems that may arise include everything from a dispute with your landlord or neighbor to a dispute with a parent over payment for providing child care services. Before going to court, however, you should consider the costs of filing a lawsuit and weigh such costs against the benefits of an excellent alternative: mediation.

Many disputes that arise in the course of operating a child care business can be resolved out of court with the help of a mediator. Mediation can be used to resolve any type of dispute including family, neighborhood, employment, business, housing, personal injury, consumer, and environmental disputes.

This handout provides basic information about mediation and is not intended to provide legal advice.

WHAT IS MEDIATION?

Mediation is a private process where a neutral third person called a mediator facilitates a discussion of the issues at hand and helps you and the other party to potentially resolve the dispute through negotiation. Both you and the other party have an opportunity to describe the issues, discuss your interests and provide each other with information that may help to resolve the dispute. The mediator will assist each person to understand the other person's point-of-view and focus on the problem(s). The process is "voluntary" in that the parties are not required to come to agreement. The mediator does not have the power to make a judgment or decision regarding the merits of the dispute, but can help the parties find a resolution that is mutually acceptable. If the parties reach an agreement, the mediator may help create a written contract, which can be enforced in court.

WHAT ARE THE BENEFITS OF MEDIATION?

Mediation has several advantages. For instance, normally mediation is much cheaper and faster than

the traditional legal process. Mediation also offers the participating parties greater involvement in reaching a solution, as well as more control over the outcome of the dispute. In addition, mediation is less formal and has more flexible rules than the trial court system. Mediation allows the parties to preserve their business relationship and provides the parties a neutral, non-adversarial forum for evaluating the strengths and weaknesses of their respective positions. Mediations are confidential and can afford a more creative resolution of problems because the parties control the process. If the mediation is not successful, you may still file a lawsuit.

WHY WOULD I WANT TO AVOID GOING TO COURT?

- **SAVE TIME.** Everyone wants their “day in court” to show the judge why they are right and the other person is wrong. Unfortunately, waiting for your day in court could take months or even years. In the meantime, you still have to deal with your problem and it may affect how successfully you are able to operate your child care business. Although a court date in small claims court will be scheduled within 70 days of filing a claim, it is not uncommon for cases to be postponed and for resolution to take a year or longer. Mediation provides an opportunity to settle the dispute quickly and more effectively.
- **SAVE MONEY.** Going to court and filing a lawsuit can be very expensive. There are costs associated with filing a claim in court and costs associated with collecting money if a judgment is rendered in your favor. If lawyers get involved, it will cost even more money because you may have to pay a portion of any settlement you receive to the lawyer to cover the cost of the legal services rendered. If you are being sued and get a judgment against you, the judgment will be reported to the credit bureaus and your credit will suffer as a result. Furthermore, if you lose your case the judge may order you to pay the other party’s court costs. Mediation offers an opportunity to settle the dispute out of court. If you are successful in settling the dispute in mediation, you can save the money which would have otherwise been spent on court costs and lawyers.
- **SAVE FACE.** What happens in court is public and is part of the public record, which means that anyone has access to the information about your case. In some instances, you may not want everyone in the community knowing about disputes related to your child care business. Mediation is a great option if you would like something to be kept private because it is confidential and conversations and settlement agreements reached through mediation can be kept confidential.
- **SAVE CONTROL.** If you go to court, a judge will decide the outcome of your case and what you and the other party must do to comply with the judgment. This means that a judge may decide against you and force you to take some actions that you do not want to take. This may include forcing you to pay money in a fee dispute or forcing you to vacate your property in the case of a landlord-tenant dispute. If you go to mediation, a neutral mediator will help you reach an agreement that is acceptable to you and the other person involved in the dispute.

ADDITIONAL RESOURCES

There are numerous organizations that provide free or low-cost mediation services to individuals and businesses. Below is a list of some local organizations that may be helpful to child care providers.

1. **Asian Pacific American Dispute Resolution Center:** a nonprofit organization that provides mediation and conflict resolution services in multiple languages to the diverse communities in the Los Angeles area, with a focus on the Asian Pacific Islander Population. Call (213) 250-8190 for more information or visit <http://www.apadrc.org/>.
2. **California Academy of Mediation Professionals:** a nonprofit organization dedicated to providing quality mediation services as an effective and efficient alternative to formal court proceedings for the resolution of disputes. Established in 1995, CAMP receives funding from the Los Angeles County Dispute Resolution Program Act. The California Academy of Mediation Professionals offers mediation services to Superior Court cases, to Small Claims Court cases, and to private cases. The first three hours of mediation for small claims cases and court-mandated cases are free. Call (818) 377-7250 for more information or visit <http://www.campmediation.org/>.
3. **California Lawyers for the Arts:** a nonprofit organization that empowers the creative community by providing education, representation and dispute resolution. Arts Arbitration and Mediation Services (A.A.M.S.) is a program of the California Lawyers for the Arts which has provided alternative dispute resolution to artists and entertainers since 1980. A.A.M.S. is the first alternative dispute resolution program in the country to specifically tailor its services for the arts and entertainment communities. A.A.M.S. provides counseling, conciliation, mediation, arbitration, neutral evaluation, and meeting facilitation and their services are not limited to artists and entertainers. A.A.M.S. mediation fees are determined individually with each party, and fees are based on a low sliding scale depending on household income and organization income or budget. Call 310-998-5590 for more information or visit http://www.calawyersforthearts.org/Alternative_Dispute_Services.
4. **Center for Conflict Resolution:** through court-annexed mediation programs, community mediation initiatives, peer mediation programs and Christian faith-based mediation, CCR provides services of the highest professional quality at the lowest possible cost to all that seek assistance in the interest of bringing peace and creating peacemakers. Call (818) 705-1090 for more information or visit <http://ccr4peace.org/>.
5. **City of Norwalk, Dispute Resolution Program:** provides mediation and conciliation services free of charge to persons that reside primarily in Norwalk and Los Angeles County. The majority of cases handled through NDRP include but are not limited to: Landlord/Tenant Matters, Consumer/Merchant, Small Claims, Business, and Neighbor-to-Neighbor Disputes. Call (562) 929-5603 for more information.
6. **Inland Valley Justice Center, Inc.:** provides dispute resolution services that are quick, economical and confidential. The services are provided primarily to low-income and moderate-

income individuals who normally could not afford to go to court or pay an attorney. IVJC is a non-profit organization and is able to provide free and low-cost services due to funding from the Dispute Resolution Programs of Los Angeles and San Bernardino counties, foundation grants, and private donations. Call (877) 832-9325 for more information or visit <http://www.ivjc.org/>.

7. **Korean American Coalition, 4.29 Center:** an alternative dispute resolution service that was founded in response to the ethnic upheaval that devastated parts of Los Angeles during the L.A. Riots of 1992. The 4.29 Center strives to provide cost-effective, efficient, and culturally appropriate means of resolving disputes. Special focus is placed on inter-ethnic, inter-cultural conflict resolution among the diverse ethnic populations of Los Angeles County, and the 4.29 Center has successfully mediated over a thousand cases in the past decade. Call (213) 365-5999 for more information or visit <http://www.kacla.org/>.
8. **Los Angeles City Attorney, Dispute Resolution Program:** offers free mediation services to residents of Los Angeles County. Call (213) 978-1880 for more information or visit <http://empowerla.org/city-attorneys-dispute-resolution-program/>.
9. **Los Angeles County Department of Consumer Affairs, Dispute Settlement Service:** offers free mediation services to the residents and businesses of Los Angeles County. Call (800) 593-8222 or (213) 974-1452 (if you live outside of Los Angeles County) for more information or visit <http://dca.lacounty.gov/tsMediation.html>.
10. **Los Angeles County Bar Association, Civic Mediation Project:** provides an affordable and accessible way to resolve disputes through mediation to the public at large, including individuals, families, small businesses, and community and neighborhood organizations. Offices are available in downtown Los Angeles, West Hollywood, Long Beach, Pomona and Pasadena. They request a nominal fee, which is waived in cases of need for mediation services. Call (877) 473-7658 for more information or visit <http://www.lacba.org/give-back/civic-mediation-project>.
11. **Loyola Law School, Center for Conflict Resolution:** provides mediation, conciliation and facilitation services, and conflict resolution training to the communities throughout Los Angeles County (particularly those adjacent to the Law School). These services are provided in English and Spanish. The Center's services are confidential. No one will be charged a fee for the services of the Center who cannot afford to pay. A sliding fee schedule will be used for those who can afford to pay. Call (213) 736-1145 for more information or visit <http://www.lls.edu/ccr/>.
12. **Valley Bar Mediation Center:** is committed to educating the public about the benefits of mediation. Their goal is to build community through mediation and peace building. They operate to provide affordable quality and mediation services to the residents of San Fernando Valley and the broader community of Los Angeles, educate citizens about the benefits of mediating disputes, reduce conflict and promote cooperation among disputing parties, facilitate resolution of disputes, reduce the costs of litigation, to enhance access to justice, and reduce the burden on the judicial system by providing mediation services of qualified and professional mediators in order to resolve disputes of all types both pre-litigation and in litigation. There are

a wide range of mediators who may provide services with or without charge. Call (818) 856-0232 for more information or visit www.valleybarmediationcenter.com.

This document was prepared by Public Counsel’s Early Care & Education Law Unit in April 2016 and is meant to provide general information. This document is not all-inclusive and is not intended to provide any individual or entity with specific legal advice. Receiving this document does not create any lawyer-client relationship. For questions or comments, please call the ECE Law Unit’s Intake line at 213/ 385 2977 ext. 300.

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