

Special Educational Needs and Disability Mediation and Disagreement Resolution: Information for Parents and Young People

What is SEND Mediation?

If you are thinking about making an appeal to the SEND Tribunal about an Education, Health and Care (EHC) plan or an EHC needs assessment, you can choose to go to a *mediation* meeting first. This is a chance to talk face-to-face with someone from your local authority with the help of an impartial mediator. Mediation aims to improve communication and understanding by bringing both parties together and helping them find an early solution that everyone agrees with. This may prevent the need for a tribunal.

The meeting is managed by an independent mediator who has knowledge of SEND and the law. They facilitate a controlled and balanced conversation, making sure everyone is treated fairly and able to have their say. The parties are encouraged to listen to each other's views and given the chance to ask questions. Once the parties have an up-to-date understanding of the issues, the mediator helps them to explore possible solutions and ways forward.

The mediator asks questions, clarifies and sometimes challenges what is being said by both sides. The focus is on what is best for the child or young person, whose views are included and discussed. When the referral is for a young person over compulsory school leaving age, it is important for the young person to take part in their mediation.

The mediator is impartial and does not judge, take sides or impose decisions. It is for the parties themselves to try and find solutions together. If an agreement is reached, this is written up and signed in the meeting. The local authority must carry out any actions set out in the written mediation agreement.

Mediation is:

- **voluntary** - you do not have to try mediation before you appeal. You can also withdraw at any time and the mediation service will issue a certificate allowing you to appeal. The local authority must attend mediation if you ask for it.
- **free of charge**
- **quicker and less formal than a tribunal** - held within 30 days of the mediation service telling the local authority you would like mediation.
- **confidential and without prejudice** - comments made by others during mediation should not be shared by anyone, except if safeguarding concerns need to be reported. The Tribunal does not usually take account of agreements made at mediation. The written mediation agreement is the only record of the meeting. This may need to be shared with others, but can only be shared with a tribunal if all parties consent to this.
- **held in a safe and supportive setting**
- **accessible, non-legalistic, simple and flexible** - parties are not 'against each other' but work together to make decisions. You can bring a friend, advisor or advocate with you. You can also ask professionals (someone from school or college,

health care, a social worker etc) to attend and provide information to help inform decisions.

If mediation doesn't fully resolve the issues and you are not happy with the outcome, you can still appeal to the Tribunal, even if you have signed a mediation agreement.

A tribunal's decision will not be affected by your choice of whether to try mediation or not, or by any mediation outcome.

When can mediation be used?

You can go to mediation before an appeal when a local authority decides:

- not to carry out an EHC needs assessment or re-assessment
- not to issue an EHC plan
- not to amend an EHC plan
- to cease to maintain an EHC plan

You can also choose mediation if you receive a final or amended plan and you:

- disagree with the sections that describe the special educational needs (B), provision (F) and/or placement (I)
- disagree with the health and social care aspects of the plan - the services responsible for health/social care must attend mediation at this stage, regardless of whether there is also disagreement about educational issues. (The Tribunal can now make non-binding recommendations on health and social care aspects as part of a National Trial, but only if you are also appealing educational issues.)

Mediation advice and certificates (compulsory)

You do not have to go to mediation, but you will need to receive *mediation advice* and obtain a mediation certificate to register an appeal. The local authority will give you details of a mediation advisor when they send you their decision letter. You need to contact the advisor within two months of the date on this letter. Advisors will give you unbiased information (*mediation advice*) about the opportunity to mediate, to help you decide whether to try mediation or go straight to the Tribunal.

If you do not want mediation, the advisor will issue you with a mediation certificate within 3 working days. If you choose mediation, you will also get a certificate after the mediation meeting, in case you still want to go to the Tribunal. You have one month from the date of the certificate, or two months from the date on the local authority's decision letter (whichever is the later date), to register an appeal.

If your disagreement is only about Section I of an EHC plan (placement), an appeal can be made without a certificate. Mediation is not available in a disagreement about Section I only, but you can ask for *disagreement resolution*.

What is disagreement resolution?

A *disagreement resolution* meeting is run by a mediator in essentially the same way as a mediation. The key difference is that while *mediation* is only used at the specific times outlined above, *disagreement resolution* can help resolve disagreements about any aspect of SEN provision, at any time. It is for all children and young people with SEND. Unlike mediation, it is voluntary for all parties.

Disagreement resolution could be used, for example, in a disagreement with:

- a school, college or local authority about how they are providing support (with or without an EHC plan)
- a local authority or health commissioning body about how they are carrying out a needs assessment or drafting an EHC plan
- a local authority or health commissioning body about health and social care provision *at any stage*, e.g. during a needs assessment
- a local authority about Section I only
- a local authority when an appeal has already been registered

Where to get advice and support

Your local authority's decision letter will include the contact details of a mediation advisor.

You can contact your local SEND Information, Advice and Support Service (SENDIASS) for independent support with mediation and disagreement resolution. You can find further information on your local authority's Local Offer website and in Chapter 11 of the [SEND Code of Practice](#).

You can also visit the [SEND Tribunal website](#) for information on the appeals process.

If you are a *young person* between 16 and 25 years old, you have the right to make choices about mediation or disagreement resolution yourself. The people who support you can still help you to make these decisions if you want them to. You can find out about how to get [information, advice and support here](#). You can also find a [young people's guide to mediation and tribunals here](#).

Standards for SEND mediators

SEND mediators can now get accredited (recognised) to show that they meet standards approved by two standard-setting bodies, supported by the Department for Education.

In response to parents' views, the voluntary standards have been introduced to help inform parents and young people in their decisions about mediation. The standards aim to develop confidence in the role of mediation and how it is carried out, ensuring quality and consistency for users. They are outlined on the College of Mediators and Civil Mediation Council websites <https://www.collegeofmediators.co.uk/> and <https://civilmediation.org/>

The names of all mediators who demonstrate that they meet the standards are listed on a public register which is available on the websites above. This confirms that they have the

level of training, skills, experience and knowledge (including knowledge of SEND law) required to be a competent SEND mediator.