

SENDIASS
Preparing for
your Mediation/
Disagreement
Resolution
meeting

Thank you for contacting the SENDIAS Service about your Mediation/Disagreement Resolution (DR) meeting.

We have put together some information to help you prepare for your meeting and give you an idea about what to expect.

We are a small service and may not be available to attend your mediation/DR meeting but will help you prepare for it.

What is mediation?

Mediation is an informal, non-legalistic, accessible and simple disagreement resolution process, run by a trained third party, and designed to bring two parties together to clarify the issues and reach a mutually agreed solution.

If you disagree with a decision that's been made by your Local Authority (LA), mediation is an opportunity to try and resolve this before considering an appeal to the first-tier SEND Tribunal Service.

Mediation is voluntary for all parties, except for the Local Authority, who must attend if requested. The LA must send someone with sufficient decision-making authority to overturn the decision during the mediation meeting, if appropriate, or agree to changes to an EHCP.

Mediation can take place following certain decisions by a local authority, these are:

- Not to carry out an EHC needs assessment
- Not to issue an EHC plan
- After a final EHC plan or amended plan has been issued
- Following a decision not to amend an EHC plan
- A decision to cease to maintain an EHC plan

What decisions are not suitable for mediation

Parents and young people **do not** have to contact the mediation adviser before registering their appeal with the tribunal if their appeal is **solely about the name of the school, college or other institution named on the plan, the type of school, college or other institution** specified in the plan or the fact that no school or other institution is named.

What is a disagreement resolution meeting?

Disagreement resolution is very similar to mediation. It is voluntary for everyone involved and applies to any aspect of special educational needs and disability (SEND) provision and health and social care disagreements during the processes related to EHC needs assessments and EHC plans. It's a great way to resolve different types of disagreement. Disagreement resolution arrangements cover all children and young people with SEND, not just those who are being assessed for or have an EHC plan.

Disagreement Resolution can also be a helpful way of discussing and possibly resolving disputes about Section I/placement issues.

Who can attend?

Every case is different. However, it's crucial that key people attend so that meaningful agreements can be reached and actions put in place, if required.

Usually there's at least one parent or carer and at least one representative from the local authority.

Your child or young person should be fully involved where possible, as long as this doesn't cause them upset or anxiety. They can attend mediation/DR meetings if they want or contribute in other ways depending on their interests and needs, such as via a phone call, email or video. There should be resources available from the mediation provider they could complete to contribute their views to the meeting.

Other parties could include school staff, who are usually very helpful at providing information and evidence at mediation/DR meetings, this would usually be the Senco or teacher. Also, staff from other agencies could attend (e.g. Educational Psychology, Speech & Language Therapy, Health, CAMHS or voluntary organisations).

As a parent or carer you can also invite someone to support you. This could be a family member, a SEND Information, Advice and Support Service (SENDIASS) worker or an advocate, if one is available locally. Legal representation isn't necessary but some parents have chosen to take a solicitor with them to mediation.

Getting ready for your mediation/DR meeting

The mediator will contact you and arrange a time to speak to you before the mediation/DR meeting. They should speak to all attendees to ensure everyone is well prepared and any new information is gathered. The mediator will ask what you want to achieve from the mediation/DR meeting and will help you prepare an opening statement so you can be clear about what you want to discuss with the LA. They will also explain the structure of the meeting, ground rules and what their role is.

Information and evidence about your child/young person's special educational needs and provision is very important. It might be worth checking what information has already been submitted to the Local Authority. You can ensure anything that hasn't already been sent or any new evidence or information is shared before the mediation and can be discussed in full.

The kind of information that can be helpful are any new reports (within the last two years) from any professionals involved with your child/young person.

It is usually helpful for school to share progress reports, attainment levels, costed provision maps/timetables, any concerns they may have and evidence of SEN Support plans the Graduated Approach (Assess,

Plan, Do, Review). These may not all be relevant; it depends if your child is on SEN Support at school or has an EHCP already.

Ideally any new information should be shared with all attendees prior to the mediation/DR meeting so there is a chance to read it. This is especially important for the LA as they may want to clarify and information or ask questions to enable them to make an informed and accurate decision on the day.

What you can expect at the meeting

The mediator is there to support everyone to listen and talk. They don't make a decision but can help everyone come up with a solution. Discussion surrounding the disagreement allows each party the opportunity to provide their views and also to listen to others. The mediator will encourage everyone present to problem solve together to help enable a way forward to resolve the situation.

The meeting should be person-centred and accessible for children and young people to attend where possible. As their parent, you'll decide if your child attends and how long for.

You'll have the opportunity to:

- Talk about your child's special educational needs and what support you feel is needed to help them learn
- Explain where you feel school life might not be working well for your child
- Ask questions to understand the graduated approach and how needs are met

The local authority will explain how the decision was made and tell you if there's any missing information and what will/may happen next.

Meetings will usually last about two hours and are held as centrally as possible to all parties at a neutral venue or online.

Mediation about the decision not to carry out a statutory assessment

If your mediation is about a decision not to carry out a statutory assessment of your child's special educational needs the Local Authority should only consider -

- If the child or young person **has or may have** special educational needs, and
- If it **may be** necessary for special educational provision to be made for the child or young person in accordance with an EHC plan

This is known as the LEGAL TEST and a policy applying a stricter test is not lawful.

What happens after the mediation meeting?

After the meeting, you'll receive an 'outcome statement'. This is a document summarising the key discussion points, the outcome and any agreed actions. Each party will have been asked to agree and sign the outcome statement before the meeting ends, to confirm it is an accurate record.

What if I'm not satisfied with the outcome of mediation?

If you disagree with the outcome of mediation, you have the right to appeal to the first-tier special educational needs and disability tribunal, if you wish.

Please contact us if you wish to discuss this or need any support and remember your timeframes to do this is important. Information about mediation/timeframes will be on the decision letter you received from the Local Authority.

For further information about the SEND Tribunal service please follow this link :

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>

The SEND Regulations 2015 make it clear what responsibilities Local Authorities have following mediation and how long they have to carry out particular outcome decisions.

Regulation 42

(1) This regulation applies where mediation has taken place and the parties to the mediation reach an agreement, to be recorded in writing (“the mediation agreement”).

(2) Where the mediation issues in the mediation agreement are those on which the child’s parent or young person has a right to appeal to the First-tier Tribunal, the local authority shall comply with the time limits set out in regulation 44, as if the mediation agreement were an order of the First-tier Tribunal.

(3) Where the mediation agreement requires the local authority or responsible commissioning body to do something in relation to which the child’s parent or young person has no right of appeal to the First-tier Tribunal, the local authority or responsible commissioning body must do that thing within two weeks of the date of the mediation agreement.

Regulation 44

Compliance with the orders of the First-tier Tribunal

(b) requires a local authority to make an assessment or reassessment, the local authority shall within 2 weeks of the order being made notify the child’s parent or the young person that it shall make the assessment or reassessment

(c) requires a local authority to make and maintain an EHC Plan, the local authority shall—

(i) issue a draft EHC Plan within 5 weeks of the order being made; and

(ii) send a copy of the finalised EHC plan to the child’s parent or young person under Regulation 14, within 11 weeks of the order being made.

Mediation certificates

If you decide to lodge an appeal with the SEND Tribunal service, you will need a mediation certificate to do this.

There are three types of mediation certificates that can be issued:

- Part 1 – if a parent or young person has considered mediation but decides to lodge an appeal with the SEND Tribunal service without attending mediation
- Part 2 – following mediation (if the mediation meeting takes place within 30 days of the request to the Local Authority)
- Part 3 – If mediation hasn't taken place within 30 days of the referral a mediation certificate will be issued to ensure the right of appeal is not lost (Mediation can still take place after this certificate is issued but speak to the mediation provider)

Mediation certificates all expire 30 days from the date they are issued.

Exceptions to issuing certificates -

Parents and young people **do not** have to contact the mediation adviser prior to registering an appeal with the Tribunal if the **appeal is solely about the name of the school**, college or other institution named on the plan, the type of school, college or other institution specified in the plan or the fact that no school or other institution is named.

The legislation

For more information about mediation and disagreement resolution you can search for the Special Education Needs & Disability Code of Practice 2015.

Chapter 11 is all about resolving disagreements and provides more information about your rights and entitlements:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

The Children & Families Act 2014:

<https://www.legislation.gov.uk/ukpga/2014/6/part/3/enacted>

SEND Regulations 2014:

https://www.legislation.gov.uk/uksi/2014/1530/pdfs/uksi_20141530_en.pdf

Useful organisations and information

IPSEA (Independent Parental Special Education Advice):

<https://ipsea.org.uk>

Council for Disabled Children (CDC):

<http://www.councilfordisabledchildren.org.uk/>

Tribunal Service (SENDIST):

<https://www.gov.uk/special-educational-needs-disability-tribunal/overview>

Special Needs Jungle:

<https://www.specialneedsjungle.com/>

Special educational needs and disability (SEND) complaints: A guide for Young People in education:

<https://www.gov.uk/government/publications/send-complaints-guide-for-young-people-aged-16-to-25-in-education>

Get in touch with us today

Our expert team at the Together Trust will do everything they can to support you and your family. Contact details can be found below, or you can get in touch by filling in our online contact form:

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