

Factsheet #2: SEND Disagreement Resolution Services

This is one of a series of factsheets that have been prepared to inform local authorities of key information to routes to disagreement resolution. You can find further factsheets on Mediation and Routes to Disagreement Resolution in our [disagreement resolution online toolkit](#).

What are SEND disagreement resolution services?

- Disagreement resolution services (DRS) are an alternative and non-adversarial way of resolving issues.
- DRS can prevent issues from escalating.
- Disagreement resolution services apply more widely than mediation. Issues that can be dealt with by DRS include EHC needs and assessments and the EHC plans but extend to broader issues such as SEN support in schools.

Why might disagreement resolution services be required?

Examples of situations where disagreement resolution services can be employed include:

- Disagreements between a parent carer and/or young person, and local authority, local commissioning group and/or educational setting on how the education, health or care duties under an EHC plan are being carried out.
- Disagreements about SEND provision where an EHC plan is not in place.
- Exclusions and attendance issues where SEND is involved.
- Difficulties that have arisen between a local authority, local commissioning group and/or school setting during EHC needs assessments.
- For disagreements about Part I (named school, type of school, no school named) only.

How can disagreement resolution services help?

- Around 80% of DRS meetings result in an agreement and it is rare that agreements are not adhered to. This is because the solutions belong to the parties and are the result of people working together.
- It is a process that helps resolve disagreements quickly which cannot be appealed to the Tribunal.
- It is an opportunity for early intervention by clarifying and discussing the issue(s) in an open and honest environment. This approach can assist to prevent a relationship from deteriorating.
- It can lead to a list of targeted outcomes which have been contributed to by all parties involved in co-produced process, including the child or young person.
- It can help all parties to focus on clear, realistic and practical solutions in a person-centred way.
- In the long term, it can help improve channels of communication and build understanding between the parties, which is especially important in an ongoing relationship such as in an educational setting.

What are the legal duties of local authorities with regards to disagreement resolution services?

You can find full details of the statutory duties on local authorities in relation to mediation in Chapter 11 of the Code of Practice. They include the following:

- Local authorities **must** make disagreement resolution services available to parents and young people.
- The service must be independent of the local authority – no-one who is directly employed by a local authority can provide disagreement resolution services.
- Local authorities **must** make the availability of disagreement resolution services known to parents, young people, headteachers, governing bodies, proprietors and principals of schools and post-16 institutions in their areas and should make them known to others they think appropriate.
- Details of the disagreement resolution arrangements **must** be set out in the Local Offer with the contact details of the service provider.

Did you know that...?

1. Disagreement resolution services can be employed at any time in the process of assessment or provision of a child or young person's education, health and care needs.
2. Disagreement resolution services are not just for the family. Local authorities, clinical commissioning groups and schools can use them to arrive at an agreement between services.
3. Local authorities usually contract disagreement resolution services from the same provider that deliver their mediation services.
4. Disagreement resolution meetings are confidential.
5. Where DRS is used for Part I only cases (placement), they are without prejudice to the Tribunal process.
6. Although discussions in disagreement resolution are confidential (unless the parties agree otherwise), the written agreements that arise from disagreement resolution meetings are not.

Testimonials from personal experiences:

Parents/Carers - "They listened to me and helped me move forward."

SENDIASS - "We were able to discuss the young person and really detail their needs, things that weren't necessarily picked up on in reports due to the masking and complexity of this young persons' needs. It was really helpful to be able to have these discussions with the LA representative."

Useful information and resources:

- [The Children and Families Act 2014, Section 51-57 and 60](#)
- [SEN and Disability Code of Practice 2014, Section 11](#)
- [SEND Complaints: A guide for young people in education](#), Mott MacDonald
- [A Place at the Table: A report on young people's participation in resolving disputes about special educational needs and disabilities](#), Margaret Doyle, University of Essex School of Law
- [Factsheet #12: Disagreement Resolution Services](#), SEN 4 U
- [SEND pathfinder: Disagreement Resolution online toolkit](#), Mott MacDonald

DRS diagram: before, during and after meeting guidance

Before the meeting

- Confirm a meeting date as soon as possible.
- Review case notes and communication between you and the other party.
- Ensure that the LA/CCG/educational representative attending the meeting is familiar to the family, informed about the case details and has the necessary authority to make decisions at the meeting.
- If in exceptional circumstances you know you cannot make a substantial decision on the day of the DRS meeting, let the mediation provider know beforehand so that they can inform the other party.
- Think about what you want to achieve from the meeting. What outcome would you like to see?
- Speak to your team leader about the options available to you that could be considered in the meeting, but do not let yourself be limited by those options.
- Be willing to compromise to achieve a fair and acceptable outcome in the meeting that meets the child/young person's needs.

During the meeting

- Remind yourself that you're here to find a mutually acceptable resolution.
- Stay calm.
- Think about the present and future, not the past.
- Discuss your case notes and relevant material with all parties.
- Listen to the parent carer, child or young person.
- At the end of the meeting the facilitator will write an outcome form with all actions agreed. This can be shared on a "need to know" basis. Make sure you are content with what is written down.

After the meeting

- The facilitator will ask for feedback from parties involved on how they feel the meeting went.
- Maintain momentum after the meeting. Give the family regular updates and keep lines of communication open.
- Follow up on the actions you agreed promptly. This will help build trust and confidence.
- Inform the family quickly if there is a delay outside your control and agree new completion dates.

What are the differences between DRS services and mediation?

	Disagreement Resolution Services (DRS)	Mediation
Who can use this service?	<p>Parent carers and young people that wish to resolve disagreements with a local authority, educational setting or local commissioning group in relation to any aspect of SEN provision</p> <p>This service can also be used when disagreements arise within or between a local authority, local commissioning group and/or school setting.</p>	<p>Parent carers and young persons who disagree with a local authority decision relating to EHC assessments and/or plans.</p>
Is it compulsory?	<p>It is entirely voluntary for all parties to use this service.</p>	<p>No. It is up to the parent, carer or young person as to whether they want to use mediation.</p> <p>However, if they are considering an appeal to the Tribunal, they must consider mediation (unless their appeal is only about Section I of an EHC plan).</p> <p>When the parent or young person chooses not to go to mediation after speaking to a mediation adviser, the adviser will issue a certificate within 3 working days from the parent or young person informing them on their decision not to go to mediation, to confirm that this information has been provided.</p>
When can this service be used?	<p>Any time if both parties agree to use it.</p>	<p>Following a local authority decision about an EHC assessment or plan if the parent, carer or young person agree to it. If a parent, carer or young person intends to register an appeal then they must consider mediation first (unless their appeal is only about Section I of an EHC plan).</p>
Is the outcome of the process legally binding?	<p>No</p>	<p>The decisions made in mediation must be adhered to by the local authority. If the local authority failed to do so, this would be enforceable via judicial review.</p>
Who else can attend?	<p>The parent or young person can be accompanied by a friend, adviser, or advocate.</p>	<p>The parent or young person can be accompanied by a friend, adviser, or advocate.</p>
Is certification provided?	<p>Certification is not produced or provided in this service.</p>	<p>After mediation has taken place, the mediator will issue a certificate within three working days confirming mediation has taken place and will state whether all the issues have been resolved.</p> <p>If the parent and young person have decided they do not want to take part in mediation, after speaking to a mediation adviser, the adviser will issue a certificate within 3 working days from the parent or young person informing them on their decision not to go to mediation, to confirm that this information has been provided.</p>
Are there timescales to adhere to?	<p>No. There are no prescribed timescales that need to be followed.</p>	<p>Yes. The timescales are set out in Regulations 42 and 44 of the SEN and Disability Regulations 2014.</p>
Are services available virtually/remotely?	<p>In accordance with social distancing guidance DRS will be provided via virtual / remote platforms.</p>	<p>In accordance with social distancing guidance mediation will be provided via virtual / remote platforms and within statutory timescales.</p>

Any enquiries regarding this publication or about SEND disagreement resolution in general should be sent to Mott MacDonald Ltd at SENDdeliverysupport@mottmac.com.

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