

Factsheet #3: Mediation

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 Routes to Disagreement Resolution and Disagreement Resolution Services in our [disagreement resolution online toolkit](#).

What is SEND mediation?

- Mediation is an informal structured process that aims to reach resolutions to disagreements.
- Mediation allows discussion to take place in an open and confidential setting.
- Mediation is facilitated by an independent and impartial person (the mediator) who ensures that everybody's voice is heard, and a strong focus remains on the child/young person.
- The mediator writes a mediation agreement at the end of the meeting which details actions agreed.
- The mediator does not take sides and does not make decisions; the parties in the dispute decide what the solutions are.
- Mediation encourages relevant parties to communicate effectively with each other and can help repair and re-build relationships that may have broken down.
- Mediation can help prevent a dispute escalating to SEND Tribunal.

When can mediation take place?

Mediation is specifically for decisions related to EHC needs assessments and plans. That means parents or young people can choose to use mediation in the following circumstances:

- Following a decision by a local authority not to carry out an EHC needs assessment.
- Following a decision by a local authority not to draw up or amend an EHC plan, but only if the refusal to amend follows an Annual Review.
- Where there is a disagreement about the needs and/or provision set out in an EHC plan.
- Following a decision by a local authority not to amend an EHC plan or a decision to cease an EHC plan.

What are the benefits of using mediation?

- Mediation is a free service for young people and parents.
- Around 85% of mediation meetings result in agreements, and it is very rare that agreements are not adhered to. This is because the solutions belong to the parties and are the result of people working together.
- Mediation reduces the likelihood of a dispute ending up at SEND Tribunal which can be costly and resource intensive.
- Mediation can be a quick way of resolving a disagreement: typically, a mediation meeting will take place within 4-6 weeks from referral.
- Mediation can help problem solve and cut through entrenched positions.
- It is non-adversarial and provides an opportunity to build trust, leading to improved communication and relationships with families.
- Mediation brings together those who can contribute to securing EHC provision and who can provide a full picture of the child or young person's needs.
- It provides an opportunity for local authorities to think about how they might need to adjust their approach to working with families.

- It gives parent carers and young people the opportunity to ask questions about the statutory SEND process.
- It gives local authorities the opportunity to clarify perspectives and to build trust and rapport with parent carers and young people.
- Decisions, agreed actions and next steps agreed in mediation are written up as SMART agreements and signed by both parties.
- Mediation reduces the likelihood of the dispute ending up at SEND Tribunal which can be costly and resource intensive. Mediation can also be a quick way of resolving a disagreement: typically, a mediation meeting will take place within 4-6 weeks from referral.

What are the legal duties of local authorities with regard to mediation?

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:

Information:

- Local authorities **must** make arrangements for parents and young people to receive information about mediation.
- Details, including contact details, of the mediation arrangements **must** be set out in the Local Offer.

Communication:

- When a local authority notifies a parent carer or young person of a decision they **must** tell them of their right to go to mediation and that they **must** contact a mediation adviser before registering an appeal with the Tribunal (unless their appeal relates to the name of the school or if there is no school named).
- The notice **must** give the contact details of a mediation adviser, the timescales, and the contact details of any person acting on behalf of the local authority.

Service provision:

- The mediation provider **must** be independent of local authorities in England and/or relevant health commissioners.

Arrangements:

- If the parent or young person decides to proceed with mediation, then the local authority **must** ensure that a mediation session is arranged within 30 days of the mediation adviser informing the local authority that the parent or young person wants to go to mediation.
- Local authorities **must** cover reasonable expenses (such as travel and childcare) for those parents who need it in order to attend mediation.

Attendance:

- The local authority **must** attend the mediation and the local authority representative **must** have full decision-making power at the mediation meeting.
- If the dispute is about health-related issues in the final EHCP, the CCG **must** attend.

What will the mediation service do?

- Make all practical arrangements for the meeting.
- Speak with the relevant parties prior to the mediation meeting.
- The mediator facilitates and manages the meeting.
- Ensure all reasonable adjustments are made to enable all attendees to participate.
- The mediator ensures everyone is treated fairly and has the opportunity to communicate and to be heard.
- The mediator maintains the focus of the conversation on the outcomes for the child or young person.
- Take reasonable steps to obtain the views of the child.
- Decisions agreed in mediation are written up by the mediator as SMART agreements / actions and signed by both parties.

Did you know that...?

1. The parent, carer or young person do not have to use mediation if they don't want to. However, if they want to register an appeal then they must have a mediation certificate issued by a mediation adviser (unless their appeal is only about the name of the school in an EHC plan).
2. The decisions made in mediation must be followed by the local authority in the timescales set out. If the local authority failed to do so, this would be enforceable via judicial review.
3. Parent, carers and young people can mediate about health and/or social care elements of an EHC assessment or plan, even if there are no disagreements on the education side.
4. Mediators must have knowledge of SEND legislation and must be accredited under the national SEND Mediation Practice Standards.
5. Parent, carers and young people retain the right to appeal to the SEND Tribunal if the issues are not resolved in mediation.
6. The parents/carers and young person receive a certificate following the mediation, and they have 30 days from the date of mediation to submit an appeal.
7. Although mediation discussions are usually confidential, the written agreements that arise from mediation are not.
8. It is assumed that young people aged 16-25 have the mental capacity to make their own decisions about mediation and participate in the process in their own right, with a helper/advocate if they wish. If a young person does not have the mental capacity to do this, an alternative person, such as the parent, can do this on their behalf. The views of the child or young person must always be sought.

Testimonials from personal experiences:

Parents/Carers - "Mediation gave me a clearer understanding of the help that is available and also the help that my child is already receiving."

Parent on behalf of young person who took part in mediation - "Our daughter took part in her mediation although she has a clinical history of anxiety and was nervous. But all involved, including the LA Officer, were very good at helping to put her at ease; it was a good-humoured meeting. This was the first time she has been able to articulate her needs and participate in a meeting about herself."

Parent on behalf of young person who took part in mediation - "It allowed the school and my daughter to bring additional information to the local authority, and challenge the contents of her EHC plan, without the need to go to Tribunal. It was not a confrontational process and allowed all parties to exchange ideas and information without the cost and formality of a Tribunal. Whilst there was some stress involved, it was nowhere near that that would have been involved in a Tribunal."

Local Authority and CCG - "The mediator was particularly helpful in keeping meeting moving forward and re-aligning perspective."

"I feel that the parents gained some trust in the local authority. Mediation was very helpful."

Education Provider and others - "Mediation gave everyone the chance to see the whole picture rather than just the element we were involved with. It allowed the story to be told without the humanity being removed. It allowed questions to be asked and clarification to be given in a safe environment."

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
- [Developing a supportive environment for children and young people with SEND](#), Council for Disabled Children
- [Independent Support Factsheet #23: Mediation](#), Council for Disabled Children
- [How does Mediation work?](#), Kids Mediation
- [What is Mediation?](#), Kids Mediation
- [Factsheet #11: Mediation](#), SEN 4 U Mediation
- [SEND mediation flow chart](#), Releasing Potential Mediation
- [SEND pathfinder: Disagreement Resolution online toolkit](#), Mott MacDonald

Mediation diagram: before, during and after meeting guidance

Before the meeting

- Make yourself available for a conversation with the mediator as soon as possible after they have contacted you.
- Confirm a meeting date as soon as possible.
- Review case notes and communication between you and the other party.
- Let the service provider know if you are new to SEND Mediation so they can provide additional support and information to help you.
- Consider whether you need to get key information from other sources such as the education provider.
- Ensure the LA/ CCG/ educational representative attending mediation is familiar with the family, informed about the case details and has the necessary authority to make decisions at the meeting.
- If in exceptional circumstances you know that you cannot make a substantial decision on the day of the mediation meeting, let the mediation provider know beforehand so that they can inform the parent, carer or young person.
- Plan what you will take to the mediation and outline this in the mediation form or in your discussion with the mediator.
- Make the mediation service provider aware as soon as possible if you feel that it would be beneficial for other professionals to attend the mediation meeting (for example SALT).

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 mediator 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 mediator 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 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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