



Mediation

If you have requested an Education, Health and Care needs assessment (EHCNA) or your child / young person already has an Education, Health and Care Plan (EHCP), there may be occasions when the local authority makes a decision that you do not agree with.

This could be if:

- They refuse to carry out an EHC needs assessment
- They refuse to issue your child with an EHC Plan following an EHC Needs Assessment
- You disagree with the description in the EHCP (this may be your child's special educational needs (SEN) and/or the provision they require)
- You disagree with the school named on the EHCP
- They refuse to amend the plan following an annual review of the EHCP
- They decide to cease to maintain the plan following an annual review.

The LA's decision will have been sent to you in a notification letter.

A successful mediation means that you may avoid the need to go to tribunal as a formal appeals process.

What is Mediation?

Mediation is an alternative dispute resolution and gives an opportunity for you as parents and the LA to come together to try to resolve a dispute with an independent mediator.

It is a chance to have a frank conversation. Hopefully you will come to an agreement about the concerns you have raised.

What do I need to do to?

The first step is to contact Wirral Mediation & Disagreement Resolution Service on 0151 522 7990 (option 2) or by email - mediationadmin@wired.me.uk. You must contact the service within 2 months of the date on your notification letter.

Section 33 and 34 of the SEND Regs 2014 states:

Arrangements for mediation;

33. *Where a parent or young person is required to obtain a mediation certificate, he or she must contact the mediation adviser within 2 months after written notice of the local authority's decision was sent, and inform the mediation adviser that he or she wishes to appeal and inform the mediation adviser whether they wish to pursue mediation.*



Where a parent or young person does not wish to or fails to pursue mediation

34(1) Where a parent or young person who is required to obtain a mediation certificate informs the mediation adviser that he or she does not wish to pursue mediation, the mediation adviser must issue a mediation certificate under section 55(4) within 3 working days of being informed by the parent or young person.

The mediation adviser may not issue such a certificate if the parent or young person did not contact the mediation adviser within 2 months of the date of the notice issued by the local authority.

A parent or young person may seek leave to appeal to the First-tier Tribunal notwithstanding that he or she is required to obtain a mediation certificate and a mediation adviser has not issued a certificate to him or her, where the parent or young person has failed to comply with Regulation 33 and the time for doing so has elapsed.

There are certain requirements of mediation, it must be:

- Voluntary – no one can make you go to mediation. It is not compulsory to attend and if you decide at any time that you no longer want to meet the local authority, you have the right to withdraw. If you decide not to go to mediation you can still appeal at a tribunal.
- Free of charge – the LA has a contract with the mediation service so you will not be charged for the meeting. The LA will pay any reasonable travel expenses and other expenses the parent or young person taking part in mediation. (SEND Code of Practice – 253 paragraph 11.22).
- Confidential.
- Accessible and flexible – it is possible to take a friend or an advocate to the meetings to support you.
- Held in a safe environment – unlike the tribunal, (which is held in a court of law or via secure video), the mediation meeting is usually held in a neutral venue, such as a hotel and not in council offices or in your home. They can also be via Teams or Zoom.
- Attended by a representative from the LA who has the authority to make a decision about your child's assessment or plan.

The LA can not refuse a request for Mediation and must arrange it. (SEN Reg 36).
Section 37 of the SEND Regs 2014 states:

Arrangements for mediation;

The body (or bodies) arranging the mediation must ensure that it is attended by persons who have authority to resolve the mediation issues.

That body must inform the child's parent or the young person of the date and place of the mediation at least 5 working days prior to the mediation unless the child's parent or the young person consents to this period of time being reduced.

How do I prepare for mediation?

Each party involved in the mediation will have to prepare a case summary, which is shared before the meeting. This helps you to consider the position of the LA and helps you to prepare for the meeting.

You may want other people who worked with your child to come to the meeting if you feel they may be able to contribute meaningfully to the discussion.

You may not have had a meeting with the LA before and feel that having a mediation meeting may avoid the need to go to Tribunal.

If you decide to go ahead with this meeting/mediation, it is the responsibility of the LA to convene a meeting within 30 days. They must give you at least 5 days notice of the meeting time and venue so that you can make preparations to attend. The mediation maybe via Teams or Zoom.



The mediation meeting

An external mediator, who is impartial and will not take sides, chairs the meeting. The mediator has knowledge of the Special Education Needs and Disability law and is trained in mediation.

They will help to facilitate the discussion so that everyone is treated fairly and has the opportunity to have their say. They ensure that the meeting represents the needs of the child and that these are at the heart of the discussion.

The mediator will ensure that an accurate record of the discussion is taken during the meeting and any agreement will also be recorded during the meeting. This is called a written record of agreement and is legally enforceable as a Tribunal Order, therefore must be complied with.

Following mediation

If the mediation meeting is successful, there may be several different outcomes which the LA has a duty to comply with:

They may agree to carry out an assessment and within 2 weeks must notify you in writing that it is starting. They then have 10 weeks in which to carry out the assessment and then to decide if an EHCP is needed. If they feel your child does not need an EHCP they must let you know in writing.

If they decide your child does need an EHCP then they must issue the final EHCP within 14 weeks.

If they agree to issue your child an EHCP, they have up to 5 weeks in which to issue them with a draft and then finalise this within 11 weeks of the mediation meeting.

If they agree to change the name of the school in the EHCP then they must issue the new EHCP naming the school in 2 weeks.

If they agree to amend the EHCP then they must do this within 5 weeks. You should receive a draft within this 5 weeks so you can check it.

If you are not happy with the result of the mediation you may still decide you wish to go to tribunal. The mediation service will issue you with a certificate to say that following mediation you wish to appeal.

Steps to be taken by a local authority;

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").

42- (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.

42- (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.

42- (4) Where the local authority was not a party to the mediation, the responsible commissioning body must notify the local authority of the mediation agreement within 1 week of the date of that agreement.

42- (5) The timescales referred to in paragraphs (2) and (3) do not apply where the parties to the mediation agree in writing to a different timescale.



Tribunal and mediation

You do not have to go to mediation if you are just appealing the school named in the EHCP (Section I only appeal), however, in most cases, if you are appealing this, it is sometimes necessary to appeal other parts of the plan too and you would need to consider mediation for them i.e. sections B, F and I.

If you wish to appeal the LA decision at a tribunal there is a legal requirement that you either go to mediation or have considered it. You call Global Mediation and advise them that you either a) want to attend mediation or b) have considered it.

If you disagree with the LA's decision, you have two months from the date of the notification letter in which to lodge an appeal. During this time you have to contact the mediation service to discuss the option of mediation. This is when you state a) you want to attend mediation (LA then have 30 days to book the meeting) or b) just that you have considered it (Global will issue you with an exemption certificate within 3 working days).

You then have two months from the original letter or a month from the date of the exemption certificate, whichever is the later, to lodge the appeal.

You must complete a SEND35 or a SEND 35a to lodge your appeal – see our guidance on this. The contact email to use for this form is send@Justice.gov.uk