



Information Advice and Support

Mediation

This leaflet explains about Mediation and what you
can expect from it.



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Mediation advice before mediation

The mediation information which is given to parents and young people:

- should be factual and unbiased, and
- should not seek to pressure them into going to mediation. Where there is more than one available, the mediation adviser should not try to persuade the parents or young people to use any particular mediator.

The mediation adviser should be ready to answer any questions from the parent or young person and explain:

- that mediation is an informal, non-legalistic, accessible and simple disagreement settlement process run by a trained third party and designed to bring two parties together to clarify the issues, and reach a resolution
- that the parent or young person's use of mediation is voluntary
- the timescales which must be met and the certificate, and
- that the local authority will pay reasonable travel expenses and other expenses to the parent or young person taking part in mediation.

Once the information has been provided it is for the parent or young person to decide whether they want to go to mediation before any appeal they might make to the Tribunal. Parents and young people have the right to appeal to the Tribunal but are not able to register an appeal without a certificate and the local authority must tell them this in the notice referred to in paragraph 11.19. Where the parent or young person decides not to go to mediation during or following contact with the mediation adviser the adviser will issue a certificate, within three working days of the parent or young person telling them that they do not want to go to mediation, confirming that information has been provided. The certificate will enable the parent or young person to lodge their appeal, either within two months of the original decision being sent by the local authority or within one month of receiving the certificate whichever is the later.

Exceptions to the requirement to contact a mediation adviser

Parents and young people do not have to contact the mediation adviser prior to 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. Parents and young people will already have had the opportunity to request a school, college or other institution and to discuss this in detail with the local authority. The disagreement resolution arrangements would be available if parents or young people and local authorities wanted to attempt to resolve the dispute about the placement by making use of these arrangements.

The mediation advice arrangements do not apply to disability discrimination claims.

Going to mediation about matters which can be appealed to the Tribunal

If the parent or young person decides to proceed with mediation then the local authority **must** ensure that a mediation session takes place within 30 days of the mediation adviser informing the local authority that the parent or young person wants to go to mediation, although it may delegate the arrangement of the session to the mediator. Parents or young people do not have to pay for the mediation session(s). The local authority **must** attend the mediation.

If the parent or young person wants to go to mediation then the local authority **must** also take part. If the local authority is unable to arrange mediation in a case which involves a disagreement on a matter which can be appealed to the Tribunal within 30 days it **must** tell the mediator. The mediation adviser **must** then issue a certificate within three days. On receipt of the certificate the parent or young person could decide whether to appeal immediately or to wait for mediation to take place. If the parent or young person initially indicates that they want to go to mediation about a matter which can be appealed to the Tribunal but changes their mind, they can contact the mediation adviser who can then issue a certificate with which an appeal can be registered.

A mediation session or sessions which arise out of these arrangements **must** be conducted by independent mediators. Once mediation is completed about a matter which can be appealed to the Tribunal the mediation adviser **must** issue a certificate to the parent or young person within three working days confirming that it has concluded. Mediation will not always lead to complete agreement between the parties and if the parent or young person still wants to appeal to the Tribunal following mediation they **must** send the certificate to the Tribunal when they register their appeal.

Parents and young people have one month from receiving the certificate to register an appeal with the Tribunal or two months from the original decision by the local authority whichever is the later. The certificate will not set out any details about what happened in the mediation – it will simply state the mediation was completed at a given date. When cases are registered with the Tribunal following mediation the Tribunal will deal with the appeal on the facts of the case. The Tribunal may cover similar ground to that explored in the mediation but will reach its own independent findings and conclusions. Mediation meetings are confidential and without prejudice to the Tribunal process and the Tribunal will disregard any offers or comments made during them. Partial agreement achieved through mediation can help to focus any subsequent appeals to the Tribunal on the remaining areas of disagreement.

The Special Educational Needs and Disability Regulations 2014 set out time limits for local authorities to implement agreements made at mediation. If the local authority does not implement the agreements within the set time limits, or ones which have been agreed with the parents or young people instead, the parents or young person can appeal to the Tribunal if it is a matter which can be appealed.

Mediation on the health and social care elements of an EHC plan

Parents and young people can also go to mediation about the health and social care elements of an EHC plan. However, unlike matters which can be appealed to the Tribunal, parents and young people do not have to receive mediation advice before going to mediation. Health and social care provision which educates or trains a child or young person is treated as special educational provision, rather than health and social care provision, and can be appealed to the Tribunal and the parent or young

Local authorities **must** make arrangements for parents and young people to receive information about mediation so that they can take part in mediation if they so choose before a possible appeal to the Tribunal.

The Mediation companies that the Stoke-on-Trent Local Authority are using are as follows:

Kids 0121 362 4567 craig.edmondson@kids.org.uk
Further information on the mediation process can be found at <http://www.kids.org.uk/Event/sen-mediation-service-stoke-on-trent>

Prime Resolution 07852 548611 marilyn@prime-resolution.co.uk
Further information can be found at <http://www.prim-resolution.co.uk/send-mediation>

Charles Horn Mediation Services 07856 534777 charles@senmediator.co.uk
Further information can be found at <http://www.senmediator.co.uk/>

person would have to contact a mediation adviser before appealing about that provision.

The notice which is sent to the parent or young person by the local authority with the final EHC plan or the final amended plan **must** tell the parent or young person that they can go to mediation about the health and care aspects of the plan and give contact details of someone acting on behalf of the local authority who the parent or young person should contact if they want to go to mediation. When contacting the local authority the parent or young person **must** tell the local authority about the matters they wish to go to mediation about. In particular, they **must** inform the local authority if they want to go to mediation about the fact that no health care provision or no health care provision of a particular kind, is specified in the plan and they **must** also inform the local authority of the health care provision which he or she wishes to be specified in the plan.

If the parent or young person wants to go to mediation about the health care matters set out in paragraph 11.32 then the local authority **must** inform each relevant commissioning body within three working days about those matters.

If the parent or young person has told the local authority that they disagree with either the education and social care element of the plan or the health and one or both of the education and social care elements then the local authority **must** arrange the mediation, after the parent or young person has contacted the mediation adviser in a case involving the education element of the plan. If the parent or young person only wants to appeal about the health care aspect of the plan then the responsible health commissioning body or bodies **must** arrange for mediation between them and the parent or young person, ensure that the mediation is conducted by an independent person who is not employed by a clinical commissioning group or the National Health Service Commissioning Board, and take part in the mediation. The health commissioning body or bodies **must** also take part in the mediation arranged by the local authority if the mediation is about the health care element of the plan and either or both of the education or social care parts of the plan. They **must** pay the reasonable expenses of the parent or young person where they arrange the mediation.

If the responsible health commissioning body or bodies are responsible for arranging a mediation which is solely about the health care elements of the plan then they **must** do so within 30 days of being informed by the local authority.

Mediation offers a relatively quick way of resolving disagreements about the health and social care elements of an EHC plan. It may not resolve those disagreements or may not resolve all of them. If there is no resolution of the parent's or young person's disagreement with the health and/or social care elements of the plan then they cannot appeal to the Tribunal. Parents and young people could at this point request that the responsible commissioning body in the case of the health care element of the plan or the local authority in the case of the social care element goes to disagreement resolution, although the health commissioning body and the local authority would be under no duty to do so and given that the disagreements have not been resolved at mediation the health commissioning body and the local authority are unlikely to agree. The mediation arrangements for the health and social care elements of an EHC plan lie alongside the health and social care arrangements set out in paragraphs 11.101 to 11.111. Going to mediation about the health and social care elements of an EHC plan does not prevent a parent or young person also complaining via the routes set out in paragraphs 11.101 to 11.111 and vice versa nor does going to mediation prevent a parent or young person subsequently complaining via those routes.

Despite there being two routes to mediation the right to go to mediation about the education, health and social care elements of an EHC plan provides an opportunity for disagreements about a plan to be dealt with at one venue and dealt with holistically. Where parents or young people have disagreements about more than one element of the plan, including the educational element, the local authority should not arrange the mediation until the parent or young person has contacted the mediation adviser and decided whether they want to go to mediation about the educational element of the plan, so that one mediation can be arranged covering all areas of disagreement.

Effective mediation

For mediation to work well:

- the mediation session should be arranged, in discussion with the parents or young people, at a place and a time which is convenient for the parties to the disagreement. The body (or bodies) arranging the mediation **must** inform the parent or young person of the date and place of the mediation at least 5 working days before the mediation unless the parent or young person consents to this period of time being reduced
- the mediator should play a key role in clarifying the nature of the disagreement and ensuring that both sides are ready for the mediation session. The mediator should agree with the parties on who needs to be there
- mediators **must** have sufficient knowledge of the legislation relating to SEN, health and social care to be able to conduct the mediation
- the local authority and health commissioner representative(s) should be sufficiently senior and have the authority to be able to make decisions during the mediation session
- the parents or young person may be accompanied by a friend, adviser or advocate and, in the case of parents, the child, where the parent requests this and the local authority has no reasonable objection. In cases where parents are the party to the mediation and it is not appropriate for the child to attend in person the mediator should take reasonable steps (within terms of time, difficulty, expense etc) to obtain the views of the child. Young people with learning difficulties, in particular, may need advocacy support when taking part in mediation
- both parties should be open about all the aspects of the disagreement and not hold anything back for a possible appeal to the Tribunal on the SEN aspects of EHC plans
- where a solicitor has acted as the mediator, under the Solicitors' Code of Conduct (rule 3 Conflict of interests), he or she should not also represent either party at the Tribunal generally, legal representation should not be necessary at the mediation, but this will be a matter for the parties and the mediator to agree. If either party does have legal representation they will have to pay for it themselves.