

Factsheet #23: Mediation

The Children and Families Act 2014 provides new duties and rights in relation to mediation.

Mediation is a statutory service commissioned by local authorities which is designed to help settle disagreements between parents or young people and local authorities over EHC needs assessments and plans. Parents and young people can use mediation before deciding whether to appeal to the First-Tier Tribunal about decisions on assessment or the special educational element of a plan.

Mediation can also consider health and social care aspects of the plan although it is not possible to appeal to Tribunal regarding these parts.

From 1 September 2014, all local authorities are required to have in place arrangements for access to high quality mediation. Mediators must have sufficient knowledge of the legislation relating to special educational needs, health and social care to be able to conduct the mediation.

Requirement to consider mediation

Parents and young people who wish to make an appeal to the Tribunal (see paragraphs 11.39 to 11.52) may do so only after they have contacted an independent mediation adviser and discussed whether mediation might be a suitable way of resolving the disagreement.

This requirement does not apply where the appeal is solely about the name or type of the school, college or other institution named on the plan.

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.

Mediation Advice

Upon contacting the mediation advisor, they must explain to the parent or young person:

- 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 and witnesses taking part in mediation

No-one should be pressured into going to mediation. The requirement under the Act is simply to obtain mediation advice.

If, on receiving that advice, the parent or young person does not wish to pursue mediation, they should inform the mediation adviser who must issue a mediation certificate within 3 working days. The parent or young person can then proceed with their Tribunal appeal.

Where the parent or young person decides that they do wish to go ahead, the local authority must arrange for mediation within 30 days.

Mediation in relation to health care issues

Where a parent or young person has informed the local authority that he or she wishes to pursue mediation and the mediation issues relate solely or in part to the healthcare provision the local authority must notify the CCG within 3 working days of what the mediation issues are.

Where the mediation issues relate solely to health care provision, the responsible CCG must arrange for mediation between it and the child's parent or young person within 30 days from the date on which it receive notification from the local authority.

Attendance at the mediation

The Special Educational Needs and Disability Regulations 2014 says that the following individuals may attend mediation:

- the parties to the mediation;
- any advocate or other supporter that the child's parent or the young person wishes to attend the mediation;
- where the child's parent is a party to the mediation, the child (with the agreement of the parent and the mediator);
- where the young person's alternative person is a party to the mediation, the young person (with the agreement of the alternative person and the mediator);
- any other person, with the consent of all of the parties to the mediation, or where there is no such agreement, with the consent of the mediator.

Where the child's parent is a party to the mediation, the mediator must take reasonable steps to ascertain the views of the child about the mediation issues.

The Code of Practice provides guidance on effective mediation and that 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 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.
- 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.
- 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.
- 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.

The Code of Practice states that generally, legal representation should not be necessary at the mediation. However, parents can be legally represented at the mediation if they wish and the mediator agrees.

Where mediation is pursued before making an appeal to the First-tier Tribunal, the mediation adviser must issue a certificate to the parent or young person within 3 working days of the conclusion of the mediation.