

What is mediation?

Mediation is a quick and informal method of bringing parties together to discuss their disagreement in a structured way in the hope that an agreement can be reached. For the majority of disagreements, before an appeal can be started, you will need to at least speak with a mediator about the possibility of mediation. The Special Educational Needs and Disability Tribunal can allow you to present an appeal without having first considered mediation but that power is discretionary and it may be difficult to convince the Tribunal to use it.

The following is addressed to parents of children and young people but is intended as guidance for anyone involved, including young people themselves. "Young people" is a phrase the Children and Families Act 2014 has introduced which means a person between 16 – 25 years of age, in education and with mental capacity.

Referring to mediation

When the local authority writes to you with a decision it must also set out details of the local mediation service it has decided to use.

Even if you do not want to go through with mediation you must first make contact with the mediation service. You will have to do so within two months of the date on the decision letter sent by the local authority.

When you make contact with the mediation services, they must explain to you:

- That mediation is an informal and non-legalistic and a form of negotiation run by a trained third party. It is designed to bring people together to discuss a disagreement.
- That your use of mediation is voluntary.
- The timescales which must be met and the mediation certificate.
- That the local authority will pay reasonable travel expenses and other expenses to you and witnesses taking part in mediation.

Expenses

The local authority will be required to reimburse you any reasonable expenses that you incur in going through mediation.

The local authority will have its own policy about what expenses it will pay and what financial limit to apply.

Placement-only concerns

If the sole concern is the placement which has been named in the Education, Health & Social Care Plan (EHCP) you will not need a mediation certificate to start an appeal. However, if placement is an issue it is usually appropriate to seek to challenge both the description of the special educational needs and the provision needed.

Speaking to a specialist solicitor at this point may be helpful.

The process of mediation

Mediation is an opportunity for you to meet with the local authority and have an open discussion, supported by a mediator, about your concerns and why you disagree with the local authority. A mediator is someone who is trained in the area of law and is able to best facilitate this discussion so that both you and the local authority are able to explain your points of view.

It is likely that there will only be one mediation session as the whole process should be concluded within 30 days. If more than one meeting is needed the mediation service should arrange it. This could result in mediation taking more than 30 days. If mediation cannot be completed within 30 days, the mediator must be informed immediately and they should issue the mediation certificate within three days. You may then appeal immediately or wait for the mediation to be completed, however, the appeal must be lodged within one month of the mediation certificate being issued.

During the mediation sessions you will be led through the disagreement by the mediator and talk through issues point by point so that there is a structure to the conversation. It is not the same as Tribunal or Court and you will not present a case. However, you will need to have an understanding of the applicable law and it is sometimes useful to at least speak with a lawyer before going to mediation.

The people who can attend a mediation session are:

- The parties to the mediation.
- Any advocate or other supporter that you wish to have with you.
- 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.

Conclusion of mediation

The mediation process cannot require that either party does anything in particular. The process relies on an agreement being reached by both sides. If no agreement is reached then an appeal will still be necessary.

It is entirely possible that some issues will be resolved, whereas others are not. In those situations you can still make an appeal to the Tribunal about the issues remaining unresolved.

A mediation certificate will be sent to you three days after the conclusion of mediation or after the decision not to proceed with mediation has been taken. This certificate must be sent to the Tribunal with the appeal paperwork.

Time limits for compliance

The time limits for compliance depend on the issues that the mediation has covered.

The following apply when mediation results in the local authority changes its mind and agrees to:

- Make an assessment / reassessment – two weeks to start process.
- Issue an EHCP – five weeks to issue.
- Amend EHCP – five weeks to issue amended version.
- Continue the EHCP – immediate effect.

- Continue and amend – continue immediately, issue amended version within five weeks.

Any other amendment or provision which is agreed in writing during mediation should be made within two weeks.

If you have any questions or require advice, please contact the Special Educational Needs team on 0118 467 6547 or senexpertsolicitors@boyesturner.com. Appeals to the Tribunal can be extremely difficult and expert advice should always be sought.