



Cumbria SEND Information, Advice and Support Service

Offering impartial information, advice and support to children and young people with special educational needs and or disabilities and their parents & carers.

MEDIATION

What is Mediation?

- Mediation is a more **informal** way of trying to **settle the dispute** between a parent or young person and the **local authority (“LA”)**, compared to an appeal to Tribunal. It may also involve the health authority (**ICB**)
- An **independent mediator** will join you and the LA and/or ICB, and their role is to help the parties **reach agreement** on the **points of dispute**.
- It is a completely **free service**. You have a **right** to try mediation whenever the LA makes a **decision** which you could **appeal** to the **SEND Tribunal**:
- An appeal to the SEND Tribunal can be made if an LA:
 1. refuses to carry out an **EHC Need Assessment** or a **reassessment**;
 2. refuses to issue an **EHC Plan**;
 3. issues or amends an EHC Plan but you disagree with any or all of **Section B** (special educational needs), **Section F** (special educational provision) or **Section I (placement)**;
 4. decides not to amend an EHC Plan after an **annual review**;
 5. decides to **cease** the EHC Plan at any point.

*Note that, from April 2018, parents and young people also have the right to appeal against the **health and social care** sections of the plan (**Sections C, D, G and H**).*

Please contact your local SENDIASS Co-ordinator for further information on appealing health and social care section of an EHC plan.



- If you have had a **lot of discussions** already with the **LA**, you may feel mediation would be of little use and/or you want to save time. If you have never had a proper discussion with the LA about **why** it has reached its **decision**, mediation **may help**. You might also think about mediating to give yourself **more time to appeal**.

Why do I need to consider Mediation?

- Before bringing an **appeal** to the SEND Tribunal, you must **consider mediation**.
- This does not mean that mediation is **compulsory**, but it must be **considered**. The **exception** is if you are appealing **only** about the **school or college placement**, or where **no** school or college is named and you are appealing about that fact.
- If you are lodging an appeal about Section I of an EHC Plan **only**, you **do not** need to provide a **mediation certificate** with your appeal paperwork. However, limiting an appeal to just this one section of an EHCP often isn't the best option. Contact your local SEND IASS Co-ordinator for further advice.

What do I need to do?

- You will need to **ring the number** the **LA** gives you on its **decision letter** and talk to a **mediation adviser**. They will tell you more about mediation, and then you can **decide** whether to mediate. Contact your local SENDIASS Co-ordinator if the decision letter does not include the details for mediation.



What happens after the call with the mediation adviser?

At the end of the discussion with the mediation adviser, you have two options:

1. You decide you do not want to mediate

- If you are not interested in entering into mediation with the LA, you can simply explain that you **do not want to mediate**.
- The **mediation advisor** will then give you a **mediation certificate** to include with your **appeal paperwork**.

Important - You need to make sure you get your **appeal to the SEND Tribunal** within two months of the date of the **LA's decision letter** or **one month** from the date of the **mediation certificate, whichever is later**.

2. You decide you do want to mediate

- Let the **LA know** you want to mediate, the LA must arrange it **within 30 days of your request**.
- The LA representative who attends **must** hold decision-making authority, and be able to make decisions for the LA in the meeting.
- The LA **cannot refuse** mediation or make you attend another form of meeting beforehand.
- After the mediation, the mediation advisor will give you a **mediation certificate** within **three working days**.

Who else will be at mediation?

The following people may attend the mediation:

- You are **entitled** to have **someone else** there to **support** you in the meeting. If you would like someone to do so, the LA or ICB **cannot** refuse to participate if it disagrees with who you chose to help you. This includes if a parent wants to be supported by a lawyer.
- The child, if appropriate (with the agreement of the parent and the mediator)



- The young person, if appropriate (with the agreement of their nominated person and the mediator)
- Where the **child's/young person's parent/nominated person** is attending the mediation **on their behalf**, the **mediator** must take **reasonable steps** to **obtain the views** of the **child/young person about the mediation issues**.
- Other **relevant** people such as somebody from the child or young person's **school or college** may also attend mediation. You and the **LA** (and ICB if you are mediating about health) would need to **agree** to them attending. If you **don't agree** about this, the **mediator** could still **let them attend**.

What happens if mediation did not result in agreement?

If mediation **did not** result in **agreement**, you need to make sure you get your **appeal** to the SEND Tribunal **within two months of the date on the LA's decision letter** or **one month** from the **date of the mediation certificate**, whichever is **later**.

What happens if mediation does result in agreement?

If you attend mediation and the **LA agrees** to settle the case and **take steps you are happy with**, you should **ensure** that you get its **agreement in writing**, setting out **clearly** what the LA has **agreed to do**. This is called a **mediation agreement**.

There are certain **timescales** that an LA must stick to after a mediation if the **mediation agreement does not include deadlines**. If it has agreed:

- **To carry out an EHC needs assessment:** within 2 weeks the LA must notify the parent or young person that it is starting, then either let the parent or young person know it has decided not to issue an EHC plan within 10 weeks, or send a finalised EHC plan within 14 weeks, of the mediation agreement.
- **To issue an EHC plan:** the LA must issue the draft plan within 5 weeks and the finalised EHC plan within 11 weeks of the mediation agreement.
- **To change the name of a school in an EHC plan:** the LA must issue the amended EHC plan within 2 weeks of the mediation agreement.



- **To amend an EHC plan:** the LA must issue the amended EHC plan within 5 weeks of the mediation agreement.

If the LA/ICB agrees to do **something else** other than the **list above** - and you didn't **agree a different deadline** for this to be done by, they must do it within **2 weeks** of the mediation agreement.

Mediation in relation to health care issues

Where a parent or young person has informed the LA 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 ICB** within **3 working days** what the mediation issues are.

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

What makes effective mediation?

The **SEND 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 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.

Suffolk IAS Services have created a series of videos to help parents fill in the SEND appeal forms 35 and 35A.

The videos are broken down into sections. It is possible to watch one section after another or simply go to a section of the form which you are unsure about.

A mediation video is also included.

Two playlists are included on Youtube:

This is the direct link to the 'Refusal to Assess' video playlist

<https://www.youtube.com/playlist?list=PLr9IrTGJpvKeDybhA6s-SHE4ll772nXm2>

The link below takes you to the playlist 'EHC Appeal Videos':

<https://www.youtube.com/playlist?list=PLr9IrTGJpvKfcPJt9xPlhD9xBLFFcmTti>

The videos refer to Suffolk on occasion, however the advice is appropriate for all areas of England.

Please contact your local SENDIASS Co-ordinator for further advice and support with Mediation.

