

SEND Mediation Information Sheet

For parents and carers, navigating the SEND system in England

What is SEND Mediation?

SEND Mediation is a free, confidential and voluntary process that provides an opportunity for parents, carers, young people and Local Authorities to discuss disagreements relating to Special Educational Needs and Disabilities.

Mediation is designed to help resolve disputes without the need for a Tribunal hearing. It gives everyone involved the opportunity to discuss concerns, clarify any misunderstandings, share information and explore possible solutions in a structured and supportive environment.

Many parents find mediation helpful because it allows them to speak directly with decision-makers, explain their concerns and ensure that their child's needs are fully understood. While mediation does not guarantee an agreement will be reached, it can often help move discussions forward and, in some cases, avoid the need for a lengthy appeal process.

Who Conducts the Mediation?

Mediation is facilitated by an independent and impartial mediator. The mediator doesn't work for either party and doesn't take sides. Their role is to manage the meeting fairly, ensure everyone has the opportunity to speak, encourage constructive discussion and help those involved explore potential solutions.

The mediator cannot make decisions on behalf of either party, determine who is right or wrong, or provide legal advice. They are there to help create an environment where all parties can communicate openly and work towards resolving the disagreement.

When Can Mediation Be Used?

Mediation can be considered whenever a parent, carer or young person has received a SEND decision from the Local Authority that carries a right of appeal to the SEND Tribunal.

This includes decisions such as:

- Refusing to carry out an Education, Health and Care Needs Assessment
- Refusing to issue an Education, Health and Care Plan (EHCP)
- Disagreements about the contents of a Final EHCP
- Refusing to amend an EHCP following an annual review
- Deciding to cease maintaining an EHCP

In most cases, parents and young people must consider mediation before they can register an appeal with the SEND Tribunal.

Where the disagreement relates solely to Section I of the EHCP (the school or educational placement named in the plan), parents and young people are not required to consider mediation before appealing.

Key Appeal Timescales

The deadline to appeal to the Tribunal is:

- Two months from the date of the Local Authority decision letter, or
- One month from the date the mediation certificate is issued,

whichever is later.

Always check the deadline stated in your decision letter and seek advice if you are unsure.

How can I prepare for Mediation?

Good preparation can make a significant difference to how confident and organised you feel during the meeting.

Before mediation, it might be helpful to review all of your evidence. Consider writing down the issues you would like to discuss, the questions you would like answered and the outcomes you hope to achieve.

You may also wish to gather any new evidence that supports your position and share this in advance where possible. Many parents find it helpful to bring a friend, family member, advocate or professional for support during the meeting.

At SEND Empowerment Advocacy, we can support parents and carers to prepare for mediation by helping them identify the key issues in dispute, understand the relevant legal framework, prepare questions and consider the outcomes they are seeking. We also have in depth guides to mediation on separate situations on our website. Our aim

is to ensure families feel informed, organised and confident going into the mediation process.

What Happens During a Mediation Meeting?

Mediation meetings are usually held online, although other arrangements may sometimes be available.

The mediator will begin by explaining the process and introducing everyone attending. Each party will then have an opportunity to explain their views, concerns and desired outcomes.

The discussion will focus on identifying areas of disagreement, exploring possible solutions and considering whether any agreements can be reached.

The mediator's role is to ensure everyone is treated fairly, has an opportunity to contribute and understands the discussion taking place. The meeting is intended to be less formal than a Tribunal hearing and to encourage constructive problem-solving.

What Happens Afterwards?

If Agreement Is Reached

- ➔ Any agreements will be recorded and shared with those involved.
- ➔ The Local Authority must comply with any legal timescales that apply following the agreement.

The mediator will issue a mediation certificate within three working days of the mediation meeting. Although an agreement has been reached, it is important to keep a copy of this certificate for your records.

Where the Local Authority has agreed to take specific actions, there are legal timescales that must be followed. These include:

- If the Local Authority agrees to carry out an EHC Needs Assessment, it must notify you that the assessment is commencing within **2 weeks**. It must then either notify you of its decision not to issue an EHCP within **10 weeks** or issue a final EHCP within **14 weeks**.
- If the Local Authority agrees to issue an EHCP, it must issue a draft EHCP within **5 weeks** and a final EHCP within **11 weeks**.
- If the agreement relates to changing the educational placement named in Section I of an EHCP, the amended EHCP must be issued within **2 weeks**.

- If the agreement relates to amending other parts of the EHCP, the amended EHCP must be issued within **5 weeks**.

These timescales are set out within the *Special Educational Needs and Disability Regulations 2014 Regulation 42 and 44* and are legally binding on the Local Authority.

If the Local Authority fails to carry out the actions agreed during mediation, it may be acting unlawfully and further advice should be sought.

If Agreement Is Not Reached

Not all mediation meetings result in an agreement, and this does not mean that mediation has failed. Many parents find that mediation helps to clarify the issues in dispute, understand the Local Authority's position and identify what evidence may be required moving forward.

- ➔ You still retain your right to appeal to the SEND Tribunal.
- ➔ A mediation certificate will be issued which can be used when lodging your appeal.

The deadline to appeal to the SEND Tribunal will be either two months from the date of the Local Authority's original decision letter or one month from the date the mediation certificate is issued, whichever is later.

It's important to note that the SEND Tribunal won't take into account whether mediation took place, whether an agreement was reached, or what was discussed during the mediation meeting. The Tribunal will consider the appeal independently based on the evidence presented.

When Mediation Might Not Be the Best Option

While mediation can be a useful way to resolve disagreements, it may not be the right approach for every family.

For example, if you have already had several discussions, meetings or correspondence with the Local Authority and feel that your concerns have not been addressed, you might decide that mediation is unlikely to lead to a different outcome. In these circumstances, you may prefer to obtain a mediation certificate and proceed directly to a SEND Tribunal appeal.

Some parents and young people may also be concerned about timescales. Where there are tight deadlines, such as an upcoming phase transfer or the need to secure support

before a change of educational setting, you may feel that moving straight to an appeal is the most appropriate course of action.

You may also prefer the structure of a SEND Tribunal, where an independent panel can consider the evidence and make a legally binding decision.

Ultimately, mediation is a voluntary process, and it's important to consider if it's likely to be beneficial in your individual circumstances.

Missing the Deadline for Considering or Requesting Mediation

It's important to be aware of the timescales that apply when considering mediation and lodging an appeal to the SEND Tribunal.

If you miss the deadline for considering mediation or obtaining a mediation certificate, you might still be able to ask the SEND Tribunal to accept your appeal. However, you will need to explain why the appeal is being submitted late, and it will be for the Tribunal to decide whether to allow the appeal to proceed.

The Tribunal doesn't automatically accept late appeals, so it's always advisable to seek advice as soon as possible if you believe you may have missed a deadline.

FAQ

<p>Will I lose my right to appeal if I take part in mediation?</p>	<p>No. Taking part in mediation doesn't remove your right to appeal to the SEND Tribunal.</p> <p>If an agreement can't be reached, or only some issues are resolved, you can still proceed with an appeal. A mediation certificate will be issued following the mediation process, which can then be used when lodging your appeal.</p>
<p>If I opt for mediation, how soon will it take place?</p>	<p>Once mediation has been requested, the Local Authority (or relevant commissioning body) must ensure that the mediation meeting is arranged within 30 days of the request being made.</p>
<p>How many days in advance will I have to prepare for mediation?</p>	<p>The SEND Regulations, Regulation 37 require that parents, carers or young people are given at least five working days' notice of the date, time and location of the mediation meeting, unless they have agreed to a shorter notice period.</p>

	This allows all parties sufficient time to prepare documentation, gather evidence and make any necessary arrangements to attend.
Can I bring someone with me to mediation?	<p>Yes. Many parents and carers choose to bring a supporter with them to mediation. This may be a family member, friend, advocate, representative from a support organisation, or another professional involved with the child or young person.</p> <p>Having support can help you feel more confident and ensure that important points are not overlooked during discussions.</p>

If you need support preparing for mediation, please contact us on:

info@send-empowerment.co.uk

www.send-empowerment.co.uk

This information sheet is intended as a general guide only and does not constitute legal advice. SEND law and guidance can change, and individual circumstances will vary.