

Mediation

If you have requested an Education, Health and Care Needs Assessment (EHCNA) or your child/young person already has an Education Health Care plan (EHC plan), there may be times when the local authority makes a decision that you disagree with. This could be:

- They refuse to carry out an Education, Health and Care Needs Assessment
- They refuse to issue an EHC plan
- You disagree with the description of your child/ young person's special educational needs in Section B
- You disagree with the provision needed to meet your child/young person's special educational needs in Section F
- You disagree with the placement specified in Section I
- They refuse to amend the EHC plan following an annual review
- They decide to cease to maintain the EHC plan following an annual review

They will send you their decision in a notification letter, which will set out your rights to appeal the decision. You have 2 months from the date of this letter in which to lodge an appeal.

There are 3 options to challenge these decisions:

- Way forward meeting
- Mediation
- Appeal to Tribunal

If you wish to submit an appeal to Tribunal there is a legal requirement that you have either been to mediation or considered it (unless you are just appealing the school named in section I). This involves contacting the mediation company to discuss the option of mediation. If you decide you do not wish to proceed they will issue a certificate within 3 working days. You then have 2 months from the date of the decision letter or a month from the date of the mediation certificate (whichever is the later) in which to lodge an appeal with Tribunal.

Way forward meeting

The local authority SEN department will usually offer you a way forward meeting in the first instance if you disagree with one of their decisions. This is a chance to meet informally with your casework practitioner to discuss the decision and the reasons that it has been made. It is possible to also include your school and/or a representative from SENDIASS in these meetings. Often disagreements can be resolved quickly at this stage without the need for more formal disagreement resolution processes. However it is not compulsory to have a way forward meeting and it does not affect your rights to mediation or appeal to tribunal.

What is mediation?

Mediation is a chance for you to have a face-to-face or virtual meeting with the local authority where an independent mediator will try to help you both to come to an agreement about any concerns you have raised about decisions reached in regard to your child or young person's EHC plan. *Please note that mediation cannot be used to resolve disputes that are only concerned with Section I Placement.*

Mediation is:

- Voluntary. There is no requirement to go to mediation, although you must at least consider mediation before appealing to tribunal.
- Independent of the local authority. In Wokingham, Global Mediation are commissioned by the local authority to provide mediation services.
- Free to parents/carers and young people. The local authority are also required to pay any reasonable travel expenses you incur.
- Accessible and flexible: it should be arranged at a time and place that is convenient to all parties to the disagreement. They can also be held online.
- Confidential.
- Has no bearing on any future tribunal. Tribunal will deal with the facts of the case and disregard any offers or comments made during mediation.
- Held in a neutral environment.
- Attended by a representative of the local authority who has the authority to make decisions about your child/young person's assessment or plan.
- You can also go to mediation about the health and care aspects of the plan (sections C, D, G & H).

How to prepare for mediation

If you decide to proceed with mediation, then the local authority must take part and the meeting must take place within 30 days.

Consider if it would be useful to ask anyone else to attend the meeting. For example if this is a refusal to assess or to issue an EHC plan, it may be helpful to invite the school's SENCO to describe the support they are currently giving and explain why this is no longer sufficient to meet the child/young person's needs.

You will be asked to start the meeting by giving a summary of the situation so far and the issues to be resolved.

If mediation is about the contents of a plan it is helpful to go through the plan in detail and determine what is missing or what you disagree with. If you can, find evidence for what is missing or inaccurate from reports. SENDIASS can help you to think about the evidence you will need to gather and to prepare what you wish to say in your summary.

SENDIASS can also accompany you to mediation if you require.

The mediation meeting

The external mediator, who is impartial, will chair the meeting. They will facilitate the meeting, clarifying the issues and ensuring that everyone has the opportunity to have their say. They will ensure that the needs of the child/young person remain at the heart of the discussion. The mediator will be trained in mediation and will have knowledge of the Children and Families Act. They will keep an accurate record of the discussion. If an agreement is reached the mediator will record this in writing (the Mediation Agreement) and all parties will sign the agreement.

If agreement is reached on matters that could be appealed at tribunal then the timetable to comply with the agreement is the same as that which would apply if it was a Tribunal order:

- If they agree to carry out an EHCN assessment they must notify you within 2 weeks that it is starting. They then have 10 weeks in which to carry out the assessment and decide if an EHC plan is needed. If they do decide your child/young person needs a plan it must be issued within 14 weeks of the mediation agreement.
- If they agree to issue an EHC plan they must issue a draft within 5 weeks, followed by a final EHC plan within 11 weeks of the mediation agreement.
- If they agree to amend the EHC plan they must do so within 5 weeks of mediation agreement.
- If they agree to amend the name of the school or type of school they must do so within 2 weeks of mediation agreement.

If you are not happy with the outcome of mediation you still have the right to appeal to tribunal. The mediation service will issue you with a certificate. You have 2 months from the date of the decision letter or 1 month from the date of the mediation certificate, whichever is the later, to lodge an appeal.

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