



Special Educational Needs and Disability Information, Advice and Support Service

Mediation

If you have requested an Education, Health and Care (EHC) needs assessment or your child/young person already has an Education, Health and Care plan (EHC) plan, there may be occasions when the local authority (LA) makes a decision that you do not agree with. If you disagree with the decision you can challenge it.

When an informal conversation with the LA cannot resolve a disagreement, you may wish to meet formally with representatives from the LA to discuss the matter further; this process is called mediation.

Whether you decide to go to mediation or not, you also have the option to go down a formal appeal route to a tribunal. Waiting lists to go to tribunal are currently long, so a successful mediation can mean a positive decision being made more quickly. Even where the mediation does not lead to the final outcome that you require, it can resolve some of the issues you have raised and could improve the situation until you go to tribunal.

Decisions made by the local authority which you can appeal

1. Following a request to conduct an assessment

- they refuse to carry out an education, health and care needs assessment
- they refuse to issue your child with an EHC plan following an EHC needs assessment

2. Following the annual review of an EHC plan

- they refuse to amend the plan following an annual review of the EHC plan
- they decide to cease to maintain the plan following an annual review

In those circumstances (1 and 2), the local authority should send you a **notification letter** to let you know their decision and the reasons behind this. The letter should also explain how you can appeal if you do not agree.

3. **When a final EHC plan has been issued, you may disagree with:**
 - the description of your child's special educational needs
 - the provision they require
 - the educational placement named in the plan
4. **If they refuse to conduct a reassessment to gather new evidence because you feel the EHC plan no longer reflects your child's needs**
5. **To appeal about health and social care matters you would need to be appealing about education issues as well**

What is mediation?

Mediation is a chance for you to have a face-to-face meeting with the LA where an independent mediator will try to help you both to come to an agreement about the concerns you have raised. There are a number of factors it is helpful to consider, whilst thinking about whether or not to go to mediation:

- **It is not compulsory.** However, if you want to go to tribunal, you will have to provide evidence that you have at least considered it. If you decide not to go to mediation, then the mediation service will send you a **mediation certificate**.
- **You can withdraw at any time** if you decide that you no longer want to go to mediation (but you will still need the mediation certificate if you wish to go to tribunal)
- **It is free** for parent carers or young people. The LA meets the cost of the mediation and will pay for your reasonable travel expenses. However, you are responsible for the costs of any representative, such as a solicitor, that you may take to mediation
- **It is held in a neutral venue** such as a hotel or online which the local authority is responsible for organising.
- **You can take someone with you** to the meeting to support you.
- You can ask **relevant people**, such as a school representative to attend
- **The mediator cannot be an employee of the local authority.** Brighton & Hove and East Sussex local authorities contract Global Mediation to facilitate their mediation. Their role is to remain impartial.
- **Mediation is a less formal process** than going to tribunal.

Is mediation compulsory?

For most issues you must consider mediation. Even if you don't want to go to mediation, you will need to contact the mediation service to obtain a Mediation Certificate. You need this certificate in order to make an appeal to the Tribunal.

If you are just appealing the school (or other education provider) named in Section I of the EHC plan then you do not have to consider mediation, though you still have the right to mediation if you want it. However, in most cases, if you are appealing this section, it may be necessary to also appeal other parts of the plan which evidence the suitability of the provider named in Section I. In that case, you would need to consider mediation.

I don't want to go to mediation

Tell the mediation service that you do not wish to go to mediation and they will send you a mediation certificate. If you want to appeal to the SEND tribunal you must do that within one month from the date you obtain your mediation certificate or within two months of the date of the decision you are appealing, whichever date is later. You do have the right to change your mind as long as you contact the mediation service within the original two month window from the time of the decision letter.

How can I arrange mediation?

When the LA sends you a decision letter it will include the details for the local mediation service. You will need to tell the LA and the mediation service that you want to go to mediation and what you want to discuss in the meeting. There is a legal deadline so you will need to contact the mediation service within two months of the decision letter.

How do I prepare for mediation?

Each party involved in the mediation will have to prepare a case summary, which is shared with everybody before the meeting. This helps you to consider the position of the LA and helps you to prepare for the meeting. You may want other people who have worked with your child to come to the meeting if you feel they could contribute meaningfully to the discussion. If they are not able to attend then they may be able to provide additional reports or emails that support your views.

If you are considering mediation, you may wish to contact [SENDIASS](#) about all the evidence you will need to gather (see the details at the bottom of this guide). We can also help you think about what to include in your summary, which will help to build

up a holistic picture of your child and their individual needs both at home and at school. For example, many children's behaviour at home is influenced by their experience at school and can differ widely in each setting. Sometimes teachers and school staff may not appreciate these differences and the challenges these pose to your child.

You may feel that having a mediation meeting with the LA may avoid the need to go to tribunal. If you decide to go ahead with mediation, it is the responsibility of the LA to convene a meeting **within 30 days**. They must give you at least **5 days notification** of the meeting time and venue so that you can prepare to attend the meeting.

Make sure the LA representative attending the meeting has the authority to make a decision about your child so that actions agreed during the meeting can be acted upon. If they do not have this authority, they must be able to phone their manager to get decisions approved during the meeting.

The mediation meeting

An external mediator who is impartial and will not take sides chairs the meeting. The mediator has knowledge of SEND law and is a trained mediator. They will help to facilitate the discussion, so that everyone is treated fairly and has an opportunity to have their say. They ensure that the meeting focuses on the needs of the child or young person.

The mediator will ensure that an accurate record of the discussion is taken during the meeting and any agreement is recorded.

Following mediation

You will receive a mediation certificate within three days of the mediation meeting. If the mediation meeting is successful, there may be several different outcomes, which the local authority has a duty of to comply with:

- If they agree to carry out an assessment, they must notify you in writing within **two weeks** that it is starting. They then have **10 weeks** in which to inform you that they are not issuing an EHC plan or, if they decide your child does need a plan, then they must issue the final plan within **14 weeks**
- If they agree to issue your child with a plan (when they have already completed an assessment), they have up to **five weeks** in which to issue a draft and then finalise this within **11 weeks** of the mediation meeting
- If they agree to change the name of the school in the plan, then they must issue the new plan naming the school within **two weeks**



- if they agree to amend the plan then they must do this within **five weeks**
- If they agree to do something else, they must do it within **two weeks**

If the LA agrees to take certain steps following the mediation, and then do not carry these out, you can challenge this by means of a **judicial review**. You may be eligible to claim legal aid to pay for any legal costs incurred.

If the LA makes changes to the EHC plan following mediation, this is the version that any subsequent tribunal would use as the 'working document'.

If everything is not resolved in mediation, you may decide to continue your appeal. See our in-depth guide on [Appealing to the SEND Tribunal](#) in the Resources section of our website. <https://amazesussex.org.uk/resources/in-depth-guides>

The mediation service will issue you with a **certificate** to say that following mediation you wish to appeal. You now have two months from the date of the notification letter or a month from the date the mediation certificate was issued, whichever is later, to lodge the appeal.

Amaze SENDIASS is the Special Educational Needs and Disability Information, Advice and Support service for East Sussex and Brighton & Hove. We offer impartial and confidential support with anything to do with special educational needs and disabilities for 0-25 year olds.

Please contact us on 01273 772289 or by email on sendiass@amazesussex.org.uk if you would like further advice and support.