
We have been notified of our right of appeal under the Children and Families Act 2014 and want to take part in mediation. What happens and what can we expect?

The requirement to consider mediation before an appeal can be registered at the Tribunal was brought in by the Children and Families Act 2014 (the Act).

The requirement to consider mediation is only related to the education sections of the education health care (EHC) plan. A parent or young person can of course choose to go to mediation regarding the social care and health sections of a plan (which the Tribunal is not able to look at).

Under section 55 (3) of the Act, a parent or young person may only register an appeal at the Tribunal if a mediation advisor has issued a certificate to them. A mediation certificate is issued when:

- (1) A mediation advisor has provided the parent or young person with information and advice about mediation and then the parent or young person has said they do not wish to pursue mediation; or
- (2) A mediation advisor has provided the parent or young person with information and advice about mediation and then the parent or young person has said they do wish to participate in mediation and they then have participated in mediation (or are deemed to have done so).

A mediation adviser is an independent person who can provide information and advice about pursuing mediation. They are not independent if they are employed by:

- a local authority in England;
- a clinical commissioning group; or
- a National Health Service Commissioning body.

Therefore, you do need to at least contact a mediation adviser before you register an appeal unless your appeal is about the school or institution named in the EHC plan or the type of school or institution (or the lack of one) only.

You can find our summary of the requirements for parents in respect of mediation here:

<http://www.ipsea.org.uk/what-you-need-to-know/mediation>

For in-depth explanation of the mediation process, we'd suggest that you could look at chapter 11 – 'Resolving Disagreements' – of the SEN and Disability Code of Practice:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342440/SEND_Code_of_Practice_approved_by_Parliament_29.07.14.pdf

Whether you decide to proceed with mediation may depend on your discussions with the local authority to this point.

Once you've spoken with the mediation adviser, it would open to you to confirm to the adviser that you don't want to go to mediation. You'll then be issued with a certificate that enables you to register an appeal to the First Tier Tribunal (SEND).

However, you might decide to proceed to mediation. The local authority that is responsible for arranging the mediation must ensure that it is attended by persons who have the authority to resolve the issues and they must give you at least five working days' notice of the date and place of the mediation (unless you agree to shorter notice).

Mediators must have sufficient knowledge of the legislation relating to special educational needs to be able to conduct the mediation but they aren't obliged to advise the parties of their legal rights during the mediation.

The local authority must pay the expenses of the mediation.

Where the parties to a mediation reach agreement, their agreement must be recorded in writing (a mediation agreement). Where the mediation issues are those on which you have a right of appeal to the Tribunal, the mediation agreement has the same force as a Tribunal order and must be complied with in the timetable which would apply if it was a Tribunal order. However, the parties can come to a different agreement about time scales in the mediation agreement if they wish.

If the parties do not reach complete agreement of all of the issues through the mediation process you will then need to register an appeal to the Tribunal. You will need a certificate following the conclusion of the mediation to confirm that you have participated. The mediation adviser must issue this certificate within 3 working days of the conclusion of the mediation.

If the local authority is unable to arrange mediation within the 30 day period time limit for doing so, the local authority must notify the mediation advisor and you will be deemed to have participated in mediation. The mediation adviser will be obliged to issue a mediation certificate and you can register an appeal.

You should remember that if you did proceed to appeal following mediation, the discussions are confidential and you would not be able to use them in the appeal.

We can only provide information through this service, rather than offer direct advice. So if you need this, or you wish to discuss the situation with someone, you should book a call with one of our Tribunal Help Line volunteers:

<https://www.ipsea.org.uk/contact/advice-and-support/tribunal-helpline>

Providing advice to parents of children with special educational needs