



Mediation

What is Mediation for Education?

Special education mediation is a process that is free to use for parents/carers/young people. The local authority (LA) meets costs, apart from if you choose to use a legal representative. It is a process in which a mediator helps to resolve disagreements for children and young people that are being assessed for or have an Education Health and Care Plan. A mediator is a specially trained neutral person to help parents/carers/young people and the LA reach agreement.

For parents/carers/young people mediation is a right and not a duty but you must consider it and obtain a certificate as you may need one to go to Special Educational Needs and Disability (SEND) Tribunal. The LA **must** attend mediation if parents/carers/young people request it.

Mediation should be arranged at a time and place which is convenient for everyone involved. You should be told the date, time and venue of the mediation 5 working days in advance of the meeting.

When might I ask for mediation?

The LA, by law, should inform you in writing when you have the right to ask for mediation. The letter should give you contact details for the mediation adviser. **You cannot choose your own mediation adviser.** You will receive this information when a decision is made where you have the right to an appeal to the SEND Tribunal, i.e.

- refusing to carry out an EHCNA
- refusing to re-assess if your child already has an EHCP
- refusing to issue an EHCP
- ceasing to maintain an EHCP
- refusing to amend an EHCP

- refusing to re-assess after an Annual Review of an EHCP and, whenever the LA
- makes an EHCP
- amends an EHCP
- replaces an EHCP

You can mediate on and appeal a wide range of decisions, including in relation to placement (section I of an EHC plan) only.

What is the next step?

You contact the mediation service, and they will talk to you about what mediation involves. If you choose not to go to mediation, they issue you with a signed mediation certificate within 3 working days and you will be able to go to SENDIST tribunal.

The Mediation Service for Derbyshire LA is Global Mediation. They can be reached on **02084411355** and via the [Global Mediation website](#).

Deciding to go to Mediation?

The mediation service will inform the LA of your decision and then arrange for the meeting to take place, usually within 30 days.

If the mediation cannot take place within 30 days parent / carer / young person will be considered to have taken part and the mediation service will have to issue a mediation certificate within 3 working days whether the mediation goes ahead at a later date or not.

What happens at mediation?

Before the mediation goes ahead you may have a discussion with the mediator who will talk to you about your case and ask for the child or young person's views so that they can prepare for the mediation meeting. It is important to be honest about all of your disagreements and not hold anything back for a possible SEND Tribunal. If mediation takes place and is not successful, what happens during the mediation will not be used in any tribunal appeal.

The person attending the mediation for the LA must have the authority to settle the dispute. The Mediator must make sure this is the case before proceeding. If they don't, the parent/carers/young person should ask to make sure this is the case. A parent/carers/young person is entitled to have an advocate or supporter present at the mediation. In exceptional circumstances, because of a lack of

capacity (Mental Capacity Act 2007), a young person of an age to make their own request for mediation may not need to attend in person but could be represented by an advocate or representative, usually a parent or carer.

If mediation is successful, it will be written into a “mediation agreement” which is legally binding on everyone. If agreement cannot be reached on all of the issues you still have the option to go Tribunal and a mediation certificate will be issued within 3 working days. If you do go to Tribunal any appeal must be registered either within 2 months of the date of the original LA decision letter or 1 month from the date of the mediation certificate, whichever is the later.

The mediation agreements

Any agreements made at mediation which could have been decided at Tribunal which require actions should be carried out as if the mediation were a Tribunal order unless otherwise agreed by everyone at the meeting.

Tribunal order timescales

Action	Timescale
To start the EHC assessment or reassessment process	4 weeks
To make an EHC plan	5 weeks
To change an EHC plan	5 weeks
To change the school named in line with parents' wishes	2 weeks
To continue an EHC plan	Immediately
To cancel (no longer maintain) an EHC plan	Immediately

Failed mediation

If a complete agreement on all the issues cannot be reached at Mediation the parent / carer / young person can register an appeal with the SEND Tribunal and a mediation certificate will be issued within 3 days of the meeting. The LA must not agree in part or place conditions on their agreement. You have 2 months from the date of the LAs original decision to register your appeal or 1 month from the date of the mediation certificate, whichever is the later.

If mediation took place and it was not successful what happened during the mediation meeting cannot be used in a later tribunal. **The mediation process is a confidential one.**

Mediation on health and social care issues

If the mediation issues are **only** about Section C and G of the EHCP (health needs and provision) the mediation must involve the responsible Integrated Care Board (ICB). You can discuss:

- the health care provision set out in the EHC plan
- the fact there is no health care provision set out in the EHC plan, or
- the fact that a particular type of health care provision is missing from the EHC plan.

If you only want to discuss health care provision in (or its absence from) an EHC plan, the integrated care board (ICB) will arrange for mediation and your local authority (LA) will not attend. The person attending from the ICB should be able to make decisions and not defer back to a panel.

If the mediation issues are not health care only then the LA must arrange the mediation and attend with the parent / carer / young person and the ICB and the time period is the same – 30 days.

If the mediation issues are only about Sections D, H1 and H2 (social care needs and provision) the LA are responsible for arranging the mediation and making sure that the person who attends has the authority to settle the dispute.

Unlike for education issues, you do not have to consider mediation for health and social care issues. The SEND Tribunal do have the power to hear an appeal about sections C, D, G and H1 and H2, but only when you are appealing about other sections of the plan. They can make recommendations about health and social care. If you decide to attend mediation and no agreement can be reached there are other complaints procedures which apply. For Health it is the NHS Complaints procedure followed by the Parliamentary and Health Service Ombudsman if necessary. For Social Care it is the LA Complaints Procedure followed by the Local Government Ombudsman if necessary.

Useful websites

- [Global Mediation](#)
- [Parliamentary and Health Service Ombudsman](#)
- [Local Government Ombudsman](#)

Who can I contact if I need further help or advice?

**DIASSEND Advice line
01629 533668**

Monday – Friday 9.30am - 3.00pm
Email: ias.service@derbyshire.gov.uk

**Messages can be left outside this time and
all calls will be returned as soon as possible**

Other factsheets can be found on our website.

**DIASS - Derbyshire Information Advice and Support Service for Special
Educational Needs and Disabilities:**

[Derbyshire Information, Advice and Support Service for SEND website.](#)

Or use the **[online contact form](#)**, accessible via our website.

**If you, or someone you know, would like a copy of this information
sheet in large print, an audio version or in languages other than
English, please contact us.**