

Pre-mediation Guidance for Local Authority Officers/ School Staff

Please read this document carefully as it contains answers to some commonly asked questions. If you have any questions or comments which are not covered here, please feel free to give us a call on 020 7837 2900 and we will do our best to help you.

What is mediation?

Mediation is a form of alternative dispute resolution, which aims to assist two (or more) disputants in reaching an agreement, with the aid of an independent third party (the mediator). The parties themselves agree on any resolutions reached- rather than accepting a decision imposed by a third party.

What will happen at the mediation?

First of all, the mediator may meet separately for a short while with the two parties involved in the situation. Then, if both sides are ok with this, you will move into the same room and the joint discussion will begin. The mediator will ask everyone there to speak briefly about the issues they are bringing to the mediation. Mediation is a chance for you to speak without interruption, and to listen to the other party. This is an opportunity for you to explain the issues as you see them. After this the issues can be explored in more detail, and together you will see if it's possible to find a way forward. If an agreement is reached, it will be written up at the end of the meeting and a copy will be given to you and the other party.

Why is the mediator there?

The mediator is there to listen, ask questions and help keep the conversation focussed on things that need to be discussed. Mediators don't offer solutions, suggestions or give advice or information. Mediators are impartial and are there to ensure people are treated fairly. Your mediator may, at times, need to ask challenging questions both to you and the other party- this is to help move things forward. The mediator is not there to pass judgement on the issue or to give a verdict on the situation; this is what happens in a more legal setting, such as a court or tribunal. The mediator is there to help both parties reach their own solutions, and to help to try and find a solution which works for everyone.

What is the point of mediation?

The aim of mediation is to reach a solution which both parties can live with. We always check beforehand that people are willing to negotiate and that they are coming to the mediation fully prepared to resolve the disagreement. If there is no willingness to negotiate or if people are not prepared to work with the other party to try and sort things out, then mediation may not be the best option, and we will be unlikely to offer a mediation session, if this is the case.

Will mediation get me the outcome I want?

Mediation is not about getting what you want; it is about meeting with the other party (the parent/s of the child concerned) to work together to find a solution which works for everyone involved. You may find that, during the course of the mediation meeting, people change their views, and you do achieve what you wanted to achieve. Or you may change your mind and (for example) decide that you are willing to accept what the parents are suggesting. As mentioned above, you should be coming to the mediation with a willingness to negotiate and being prepared to resolve matters.

Do I have to go to mediation?

No- mediation is a voluntary process so there is no compulsion on anyone to take part against their will. If you feel that there is no scope for negotiation then please call us to have a chat- it may be that matters can only be resolved through another means, such as the Tribunal.

The parents have already lodged an appeal with the Tribunal. Can mediation still take place?

Yes, definitely. If matters are resolved at mediation, then the Tribunal appeal can be withdrawn.

How quickly can mediation be arranged? Can a mediator come along to a meeting we're having with a particular parent the day after tomorrow or next week?

Once both parties have agreed to take part in mediation, we usually allow two weeks for the necessary paperwork to be completed by us. How quickly a mediation meeting can be arranged also depends on all parties' availability.

Mediators are not able to just turn up to meetings with LAs/ schools and parents; in order for an independent mediator to be present our service and everyone attending the meeting must be clear well in advance that the meeting is going to be a mediation. The day after tomorrow or next week is usually too short notice in terms of us being able to complete the necessary paperwork and to book an available mediator.

Who will the mediator be?

We have a panel of experienced, professional mediators all of whom are fully trained in SEN mediation, and have a broad working knowledge of SEN matters. One of the panel mediators will be allocated for the case, and we will send you brief details about her/him before the session. Your mediator will be fully briefed by our office staff on the details of the case.

Where will the mediation take place?

We ask that Local Authorities provide venues for SEN mediation meetings. We have produced a venue flyer which outlines the key requirements for venues for mediations- please contact us if you have not yet received a venue flyer. Parents usually prefer 'neutral' venues such as a professional development centre (if one is available), or a community centre.

It is helpful for us if LA's can confirm with us when they have been able to book a venue, and to give us the address of the venue. It is also useful if brief directions via public transport can be provided for us. We always need to know the details of the venue *at least one week* before the mediation date.

If you have any questions about the venue please let us know as soon as possible.

Is there anything else we need to provide for the mediation venue?

Yes- we usually ask for two rooms to be booked, so that the mediator can work in private with either party. It is also preferable if a flip chart can be provided in one of the rooms. People usually like to have tea/coffee/water/biscuits readily available as well.

I am not sure exactly why these parents want mediation. Can you send me their 'agree to mediate' form now, so that I can prepare a response to it, as part of my 'agree to mediate' form?

No- the way that SEN mediation works is that once both 'agree to mediate' forms are returned to us we then exchange the forms. This is so that no one has an advantage over

the other party. Likewise, we wouldn't give the parents a copy of your form without sending you theirs at the same time.

You will have received a brief outline of the parents' issues initially. The parents are likely to be willing for us to explain to you in more detail their views, if you are still unclear. Due to the confidential nature of the mediation process, we would need to confirm this with them first. We would not be able to send you their actual 'agree to mediate' form until we had received your completed form back.

Your 'agree to mediate' form should explain the LA's (or school's) views on the situation which has brought parties to mediation, rather than being a response to what the parents think about things.

What does 'authority to settle' the disagreement mean?

Authority to settle means that you can agree to any agreements made in your capacity as LA or School representative during the course of the mediation meeting, without having to refer to anyone else. If you do not have this authority, for example, if matters are always referred back to a panel for a decision, you must let us know this as soon as possible. This is so that everyone can be clear beforehand on the expected outcomes from the mediation meeting.

Can I bring someone with me?

Yes, definitely. It is likely to be very helpful if you can bring someone along to the mediation meeting who will be able to add something to the discussion. This could be an Educational Psychologist, a Speech & Language Therapist, a Social Worker, someone from the child's school, or a Local Authority SEN team colleague. Please contact us to discuss further.

Can I bring our local authority's solicitor or legal representative with me?

We usually discourage the attendance of a solicitor or another legal representative, as this goes against the informal nature of mediation. The only time we would allow legal representatives to be present would be if both parties to the disagreement were bringing legal representatives to the mediation meeting. Please contact us to discuss further.

I don't know if my colleague can come to the mediation. She will let me know the morning of the mediation date, or she will just turn up on the day if she's free- is that ok?

No- you must let us know the name and contact details for the person/s you are taking with you *at least a week* before the session, so that we can talk to them before the mediation. We will also need her address, so that we can send her details of the mediation, and her phone number so that we have a brief chat with her about mediation as well. We also need to let the other party and the mediator know who is going to be there on the day, before the actual meeting.

If the person who is coming with you isn't sure till the day of the mediation if she can come, please let us know- 020 7837 2900. If she turns up unexpectedly it might not be possible for her to join in.

My colleague and I are attending the mediation and we're bringing 2 or 3 other colleagues with us. Is that ok?

Yes- but you must let us know how many people are coming with you and who they are *at least 2 weeks* before the mediation session. This is because we may need to book a second mediator if there are lots of people attending the mediation (remember that the parents may also be bringing 2 or 3 people). If you don't let us know till a week before or less, it may not be possible for the mediation go ahead on the arranged date.

What do I need to bring with me to the mediation? Should I bring all the documents I've got on the child's case?

You should bring with you only the key documents, (for example the child's statement and copies of any funding proposals). If you feel more comfortable bringing the complete selection of documents, you are of course free to do so. However, mediation is not about proving the authority/ school's case- it is more about being able to summarize the key points as you see them for negotiation purposes. We usually try to keep mediation meetings as paper-free as possible; however copies of the relevant key documents can often be very valuable.

What do I do if I want to talk to the mediator in private during the mediation?

Anyone can ask for time-out at any point during the session. All our mediators are friendly, approachable and down to earth people so you shouldn't hesitate to tell them if you are feeling anxious about something or just feel that you need a short break. There will usually be time for breaks for everyone during the meeting.

Will the mediation meeting be entirely face to face with the other party?

The emphasis in SEN mediation meetings is on face to face meetings. This is because the aim of such meetings is to have open and frank discussions. If someone gets angry, the mediator is likely to suggest a break to allow time for her to calm down. Mediation is a safe and non-threatening process and you should rest assured that the safety of everyone there will be respected at all times. LA representatives have reported to us that people are often more likely to keep calm in mediation meetings, with the presence of an independent third party.

What happens if we don't reach an agreement?

Mediation can generate fresh and original solutions which the parties might not have considered beforehand. Both parties are coming to the session with a willingness to negotiate and to resolve the disagreement. There is therefore a good chance that mediation will result in an agreement, and we find that in around 80% of cases some kind of agreement and plan of action is reached at the end of the session. If no agreement is reached, another route to resolving matters will still be able to be taken.

How do I know that the parents are going to do what they agree to do, if an agreement is reached?

In our experience, agreements are always made in good faith. Agreements reached at SEN mediation are not legally enforceable. However, mediation can often provide a fresh start for everyone involved to help to ensure that any agreements made are kept by all parties. It is not our role to monitor or enforce agreements made in mediation meetings.

I have more questions, which aren't listed here. What should I do?

Give us a call on 020 7837 2900, and we will do our best to help.