



Northamptonshire EHC Team:

Guide Mediation Advice and Resolving Disagreements

Principles for Resolving Disagreements

The guidance on resolving disagreements is based on the following principles:

Decisions about provision for children and young people with SEN or disabilities should be made jointly by providers, parents, and children and young people themselves, taking a person-centred approach, with the views of children, young people and parents taken into account when those decisions are made.

Relations between education, health and social care services and parents and young people should be marked by open communication so that parents and young people know where they are in the decision-making process, their knowledge and experience can be used to support good decision-making and they know the reasons why decisions have been made.

Parents and young people should be given information and, where necessary, support so that they can take part in decision-making and complaints processes. Support can be provided by statutory or voluntary organisations.

All schools and education settings will have a complaints policy that can be requested from the setting and followed.

Impartial Advice and Support

Parents and young people can access informal support in resolving disagreements through the local impartial information, advice and support service and with the help of independent supporters.

Disagreement Resolution and Mediation Arrangements

While 'disagreement resolution' and 'mediation' are often used interchangeably, under the Children and Families Act 2014 they refer to different processes.

Disagreement Resolution is the process for exploring and addressing issues about any aspect of SEN provision, including health and social care disagreements. The child or young person does not have to have or be in the process of being assessed for an Education, Health and Care Plan, in order



Children First
Northamptonshire



Northamptonshire
County Council

to access the disagreement resolution process. It is intended to provide a quick and non-adversarial way to resolve disagreements. Disagreement resolution arrangements apply more widely than mediation arrangements.

Mediation Arrangements (set out in paragraphs 11.13 to 11.38 of the Special educational Needs and Disabilities Act) apply specifically to parents and young people who are considering appealing to the Tribunal about EHC needs assessments and the special educational element of an EHC plan or who want mediation on the health and social care elements of an EHC plan.

Whereas parents and young people must contact a mediation adviser before registering an appeal about EHC needs assessments or the SEN element of an EHC plan they do not have to engage with the disagreement resolution services at any time, including before registering an appeal.

Use of the disagreement resolution services is voluntary and has to be with the agreement of all parties. The service, while commissioned by it, must be independent of the local authority – no one who is directly employed by a local authority can provide disagreement resolution services. Parents and young people can also access informal support in resolving disagreements through the local impartial information, advice and support service and with the help of independent supporters.

The disagreement resolution service is to help resolve four types of disagreement or to prevent them from escalating further:

1. The first is between parents or young people and local authorities, the governing bodies of maintained schools and maintained nursery schools, early years providers, further education institutions or the proprietors of academies (including free schools), about how these authorities, bodies or proprietors are carrying out their education, health and care duties for children and young people with SEN, whether they have EHC plans or not. These include duties on the local authority to keep their education and care provision under review, the duties to assess needs and draw up EHC plans and the duty on governing bodies and proprietors to use their best endeavours to meet children and young people's SEN.
2. The second is disagreements between parents or young people and early years providers, schools or post-16 institutions about the special educational provision made for a child or young person, whether they have EHC plans or not.
3. The third is disagreements between parents or young people and CCGs or local authorities about health or social care provision during EHC needs assessments, while EHC plans are being drawn up, reviewed or when children or young people are being reassessed.

Disagreement resolution services can also be used to resolve disagreements over special educational provision throughout assessments, the drawing up of EHC plans, while waiting for Tribunal appeals and at review or during reassessments.

4. The fourth is disagreements between local authorities and health commissioning bodies



Children First
Northamptonshire



Northamptonshire
County Council

during EHC needs assessments or reassessments, the drawing up of EHC plans or reviews of those plans for children and young people with SEN. In relation to EHC plans, this includes the description of the child or young person's education, health and care needs and any education, health and care provision set out in the plan. **These disagreements do not involve parents and young people.**

5.

A decision by parents and young people not to use disagreement resolution services has no effect on their right to appeal.

Disagreement resolution services can be used at any time, if both parties agree, including while an EHC needs assessment is being conducted, while the plan is being drawn up, after the plan is finalised or while an appeal is going through the Tribunal process. The disagreement resolution arrangements are designed to resolve disagreements about the performance of duties, SEN provision, disagreements over health and social care provision and disagreements between health commissioners and local authorities and are voluntary for both parties.

Disagreement resolution meetings are confidential and without prejudice to the Tribunal process.

Mediation

If parents or young people want it to, mediation can take place following decisions by a local authority

- not to carry out an EHC needs assessment,
- not to draw up an EHC plan, after they receive a final EHC plan or amended plan,
- not to amend an EHC plan or a decision to cease to maintain an EHC plan.

These mediation arrangements complement the disagreement resolution arrangements. The mediation arrangements are specifically linked to decisions about EHC needs assessments and plans.

Parents and young people who wish to make an appeal to the Tribunal (see paragraphs 11.39 to 11.52) may do so only after they have contacted an independent mediation adviser and discussed whether mediation might be a suitable way of resolving the disagreement.

If the parent or young person is considering registering an appeal and has contacted the mediation adviser, the adviser will provide information on mediation and answer any questions which the parent or young person may have. The information will normally be provided on the telephone, although information can be provided in written form, through face-to-face meetings or through other means if the parent or young person prefers.

Parents and young people are not able to register an appeal without a certificate from a mediation service. Where the parent or young person decides not to go to mediation during or following contact with the mediation adviser the adviser will issue a certificate, within three working days of the parent or young person telling them that they do not want to go to



Children First
Northamptonshire



Northamptonshire
County Council

mediation, confirming that information has been provided. The certificate will enable the parent or young person to lodge their appeal, either within two months of the original decision being sent by the local authority or within one month of receiving the certificate whichever is the later.

Mediation Services are specifically focused on issues and disagreements relating to Education, Health and Care (EHC) Plans. This includes where a request has been made for an assessment for an EHC Plan and that request has been turned down by the Local Authority. Decisions relating to the assessment process or the educational provision or needs described in an EHC Plan can be appealed to the First Tier Tribunal.

Obtaining Mediation Advice

From the 1 September 2014 a parent or young person wishing to appeal to the First Tier Tribunal about the education elements of EHC assessments and plans will need to obtain a certificate to demonstrate that they have at least considered mediation before the Tribunal will accept their appeal. This certificate will be issued by a Mediation Adviser, who can provide support and guidance to you about what can be appealed to tribunal, how mediation can be accessed and who the appointed mediators are for the East Midlands.

You do not have to contact the mediation adviser prior to registering an appeal with the Tribunal, if the appeal is solely about the name of the school/college/other institution named in the EHC Plan, or the type of school/college/other institution specified in the plan, or the fact that no school or other institution is named.

Mediation advice is also not required where the disagreement is in relation to a disability discrimination claim.

Following a tendering process Global Mediation Ltd was appointed to provide Mediation Advice across the East Midlands region. This service is free of charge to users and can be accessed via the following Freephone number – 0800 064 4488.

Global Mediation Ltd is a separate organisation from the providers of mediation services in the East Midlands and is therefore able to provide neutral and independent advice on the mediation process and refer you to a mediation provider, if appropriate.

Arrangements (see appendix one for contact details)

Families should note that mediation now needs to be considered before an appeal can be lodged with the First Tier Tribunal and that a certificate will be required to indicate that such consideration has been given (except if the appeal is solely about the named or type of provider on the plan).

Consider advice and support from Northamptonshire's Information Advice and Support Services (IASS).



Children First
Northamptonshire



Northamptonshire
County Council

Consider using Disagreement Resolution Services to discuss failure in duties, disagreements about SEN provision, health and social care element of an EHC plan, Health Commissioning and Local Authority services. This is open for all children and young people with special educational needs or disabilities not just those who have a plan or are being assessed. Use of this service is voluntary but can provide a quick way to resolve disagreements.

Parents must contact Mediation Advice Services about decisions about EHC needs assessments and plans before registering for an appeal. Information is normally provided on the telephone, although information can be provided in written form, through face-to-face meetings or through other means if the parent or young person prefers. A certificate will be issued from the Mediation Advisor if an appeal is planned.

If it is decided by the parents or young person that they wish to proceed with mediation, the Local Authority must ensure that this takes place within thirty days of being informed by the advisor of this intention. The Local Authority must attend. Parents and young people will not be charged for it.

Appeal to Tribunal. The appeal must be lodged with one month from receiving the certificate or two months from the original decision whichever is the later. This is the final stage of resolution and should be used only when all other avenues for resolution have been explored unsuccessfully. Partial agreement achieved through mediation can help to focus any subsequent appeals to the Tribunal on any remaining areas of disagreement.

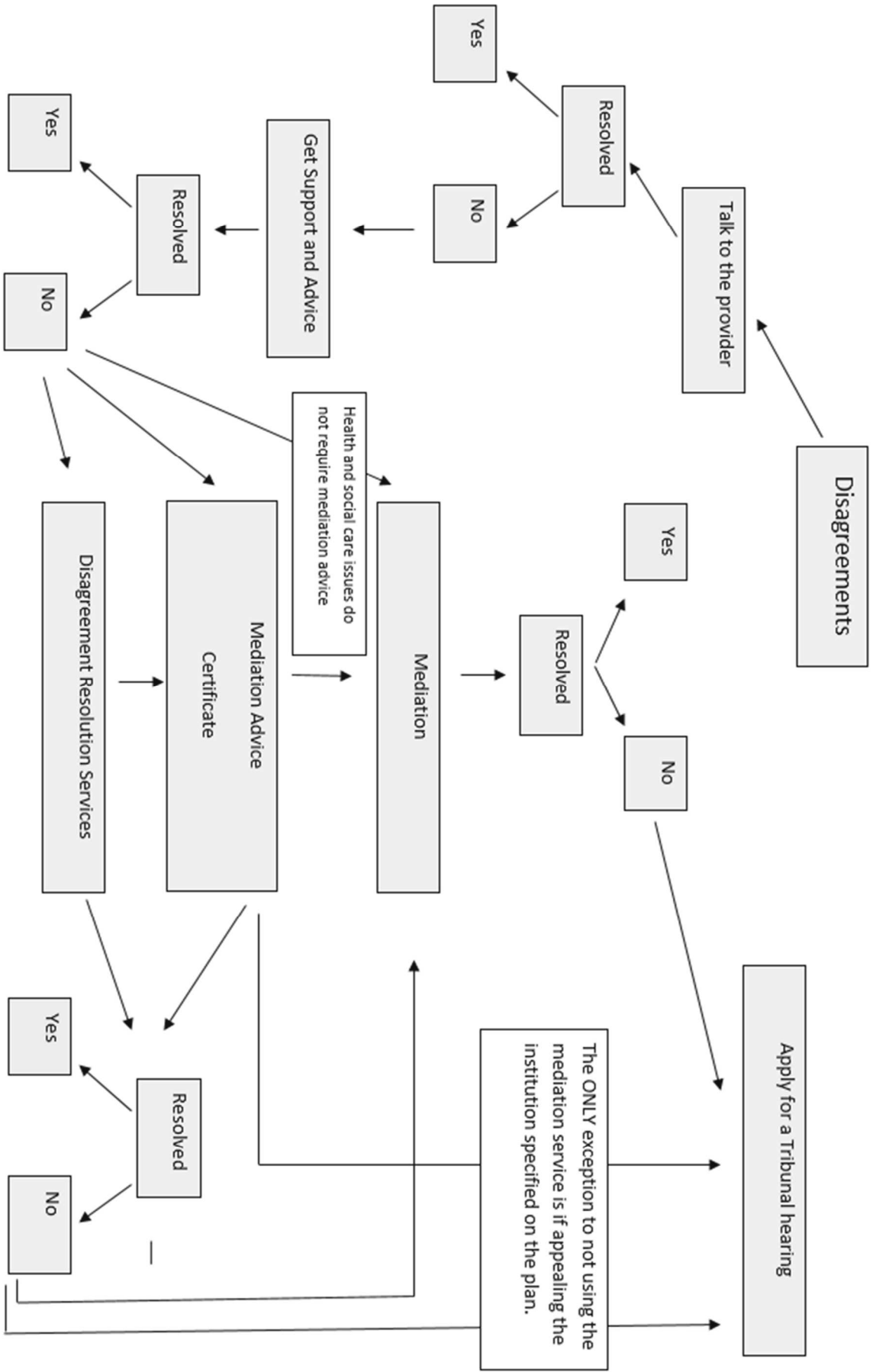


Children First
Northamptonshire



Northamptonshire
County Council

What to do if you disagree



Children First
Northamptonshire



Northamptonshire
County Council

Appendix One: Useful Contacts

Northamptonshire Independent Advice and Support Service

01604 364772 (Monday to Friday from 9am to 5pm)

Email: contact@iassnorthants.co.uk

Global Mediation Ltd

0800 064 4488

Global Mediation was appointed to provide Mediation Advice across the East Midlands region. This service is free of charge to users and can be accessed via the Freephone number – 0800 064 4488.

Global Mediation Ltd is able to provide neutral and independent advice on the mediation process.

Appeal to Tribunal

SEND, SEN Appeals,
Mowden Hall,
Staindrop Road,
Darlington, DL3 9BG

www.justice.gov.uk/tribunals/send

Local Government Ombudsman (LGO)

PO Box 4771 Coventry CV4 0EH

NB The LGO investigates the processes used to make decisions and whether there has been mal-administration. It can look at the decision making process and the delivery of the provision set out in EHC plans. It has no power to make recommendations to schools.



Children First
Northamptonshire



Northamptonshire
County Council