

Mediation

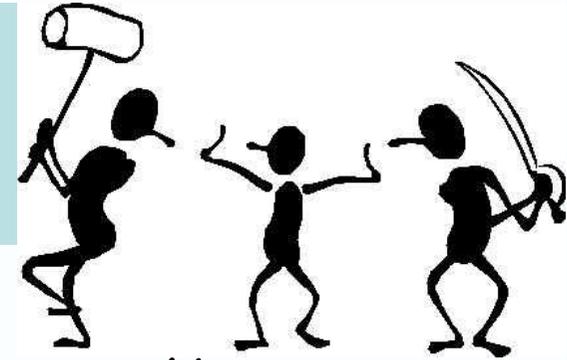


20/08/2018

Information for parents about the mediation process which forms part of disagreement resolution in the Education, Health and Care needs assessment and Education, Health and Care Plan processes.

Where parents want to appeal to the Special Educational Needs and Disability Tribunal against a decision made by the Local Authority about these processes, they will need to provide evidence to show that *at least* they have been advised about mediation and what it can offer.

What is Mediation?



Attempt to resolve disagreement between 2 parties, facilitated by an independent person with no vested interest either way.

When a parent uses mediation in an attempt to resolve disagreements within the EHC needs assessment process :

- the 2 parties are the LA* and the parent and/or young person (a young person over 16 is deemed to be making the appeal themselves)
- the disagreement is a decision made by the LA regarding EHC needs assessment or EHCP
- the meeting is facilitated by a trained mediator from a mediation service.

***Stop Press!**

The tribunal (SENDIST) now has an extended remit to include health and social care issues, rather than being limited to just considering education issues. This called the 'Single Route of Redress'

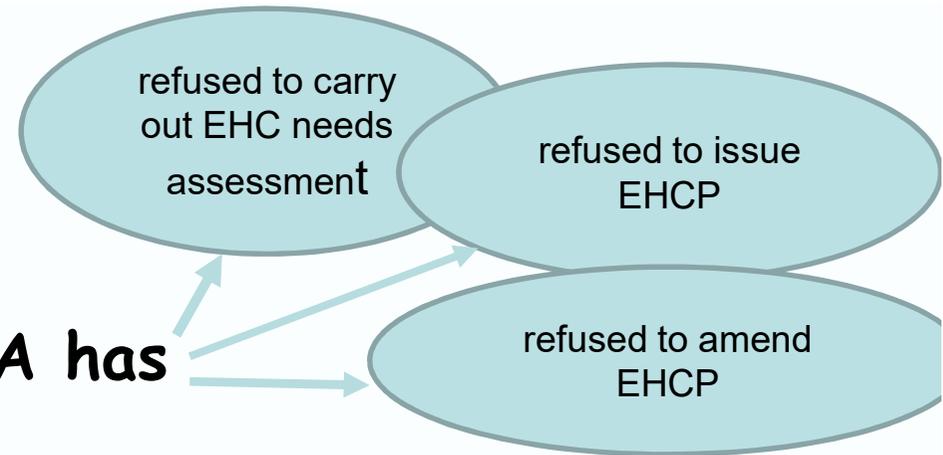
It means that parents can now challenge what is in an Education, Health and Care Plan in the sections concerning their child's health and social care needs and provision, as well as challenging the sections for educational needs and provision.

This will also have an effect on what is discussed in mediation meetings. Health professionals (eg Designated Medical Officer) representing the health commissioners may need to attend mediation meetings as well as a local authority representative.

NB. The above only applies to mediation/appeals regarding the content of the EHCP.

Mediation :

- can take place when the LA has
- is free to parents
(but legal representation would need to be paid for)
- is confidential and without prejudice to the tribunal process



Mediation arrangements comprise *mediation information* (from Global Mediation) and *mediation meetings* (Kids or Together Trust).

Having a mediation meeting is voluntary (for parents/YP)

What does the SEND Code say? (p251)

- LAs **must** make arrangements for parents and young people to receive information about mediation so that they can take part in mediation if they so choose before a possible appeal to the Tribunal.
- Any mediation provision - by a mediation advisor (providing information) or mediator (conducting mediation) - **must** be independent of the LA and/or relevant health commissioners ie no-one who is directly employed by a LA or a relevant health commissioner can act as a mediator.

The routes to Mediation

- LA must tell parents/YP of their right to go to mediation and how to do that. This information is provided in the letter that is sent to parents telling them of the decision made by the LA (eg to refuse to carry out an EHC needs assessment).
- The letter should have the contact details of the mediation advisor (Global Mediation), and a brief explanation of how the mediation/tribunal process can be started. A further referral will be needed to the mediation provider (Kids, Together Trust) if the parent wishes to have a mediation meeting.

Contact details

Global Mediation - Mediation advice 0800 064 4488.

Website www.globalmediation.co.uk

Email info@globalmediation.co.uk.

Together Trust - Mediation facilitator 0161 283 4836.

Website <http://www.togethertrust.org.uk>.

Email drs@togethertrust.org.uk

Kids - Mediation facilitator 0333 006 2835.

Website <https://www.kids.org.uk>

Email senmediation@kids.org.uk

Mediation within the Tribunal process

Parents must provide a certificate to the tribunal to show that they have at least had advice about mediation.

Some parents will want to attend a mediation meeting to try to resolve issues without having to make an appeal.

The mediation certificate is issued either by the mediation adviser (Global Mediation) or by the mediation provider (Kids or Together Trust) after the mediation meeting.

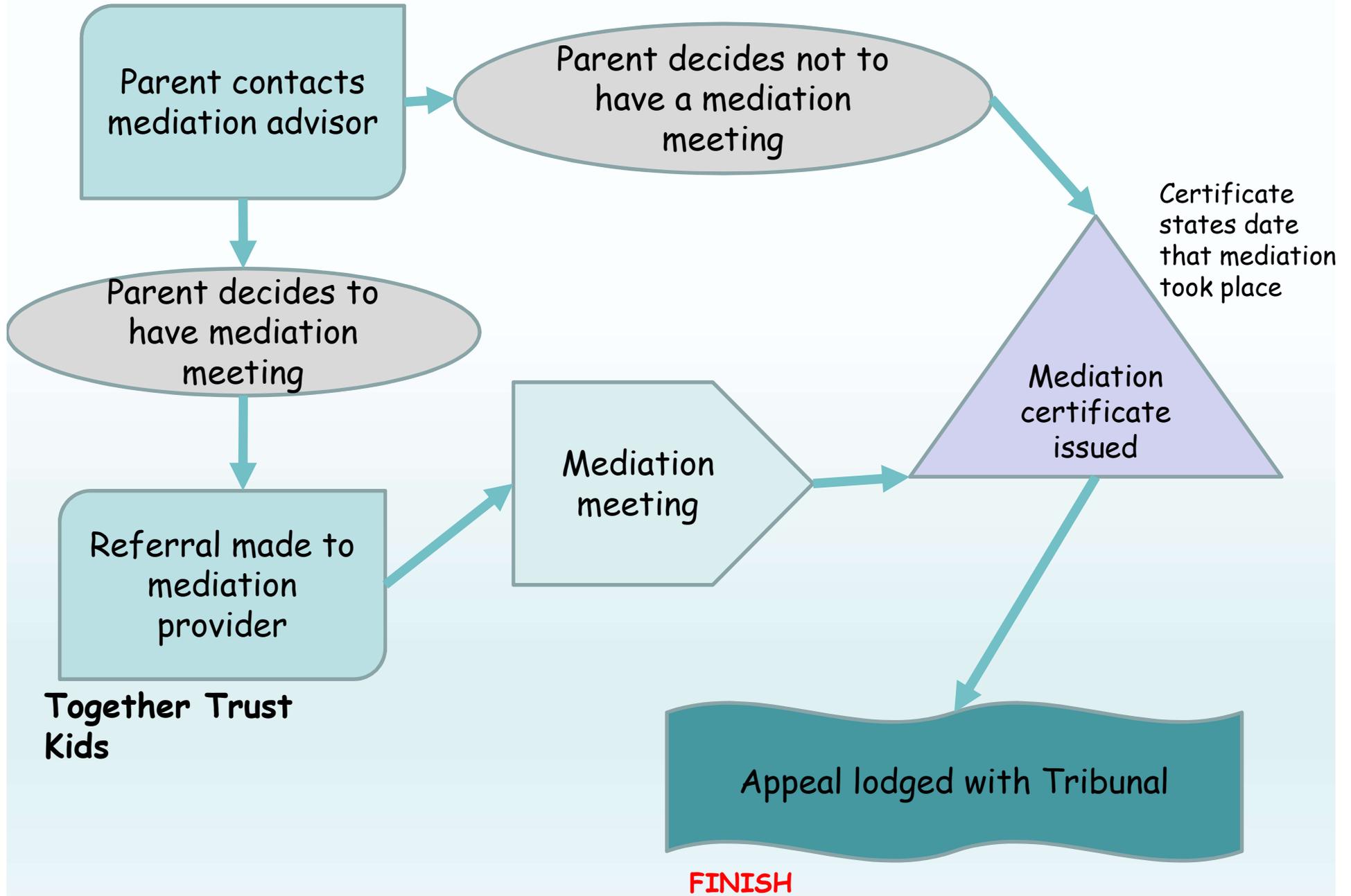
Mediation within the Tribunal process

Parents must provide a mediation certificate before lodging an appeal to SENDIST (the First Tier Tribunal) for the following :

- Refusal to carry out an EHC needs assessment
- Refusal to issue an EHCP
- Refusal to amend the content of an EHCP
- Refusal to reassess eg following annual review

An appeal against the school named in Section I does not require advice to be taken from the mediation advisor, or a mediation meeting. However, what is written in other sections of the EHCP will inform the naming of a school, and parents are advised to appeal against the content of the EHCP as well as against the school place.)

START
Global Mediation



FINISH

Who **must**/should/could attend the mediation meeting?

If the parent/YP decides to proceed with mediation then the LA **must** attend.

- **Mediator** (independent facilitator)
- **Parent/YP/child**
- **LA representative** (must have authority to change the decision) and **health representative** if the parent is dissatisfied about health needs or provision
- Supporter for parent/YP (eg from Ask Us Notts)
- School/setting staff
- Specialist education staff

Timescales

- Mediation advisor must issue the certificate within 3 working days of parent/YP telling them they do not wish to have a mediation meeting.
- Appeal must be lodged either within 2 months of the LA decision (eg not to assess) or within 1 month of receiving the mediation certificate whichever is later.
- If parent wishes to have a mediation meeting the LA must arrange for that to be held within 30 days of being told that, and must take part. Mediation certificate to be issued within 3 days after the meeting.
- If the mediation meeting cannot be held within 30 days, LA must tell the mediator who will issue a certificate within 3 days. A meeting can still take place but is likely to be after the appeal is lodged.
- Parents can change their minds about the mediation meeting.

What is Ask Us Nottinghamshire's role in supporting parents/YP with mediation?

Ensure they understand what form the meeting takes, who will be there, role of mediator etc

Usual pre-meeting preparation (list of issues to raise, reference to LA's stated reasons for decision etc)

Explain any legal points (eg no blanket policies)

Ensure parent/YP understands what is being said, gets their views heard, is clear what action is proposed following the meeting etc

What happens after the mediation meeting?

- The mediator will provide notes for the meeting to both parties, and send the mediation certificate to parents or young person.
- If there was agreement at the meeting that the decision(s) the parent is unhappy with is/are to be overturned, then the LA should send a letter to the parent clarifying what is to be done and when. This gives a date for the resuming of the 20 week EHC needs assessment and EHCP process - it picks up where it left off.
- If there is no agreement or only partial agreement, the parent or young person will lodge their appeal, sending in the mediation certificate with the appeal form.

Ask Us Nottinghamshire

Email us on :

askus@futuresforyou.com

Telephone us on :

0800 1217772