Key differences between “mediation” and “disagreement resolution”

“Mediation” is a form of “alternative disagreement resolution” (ADR)

The DfE decided to introduce “mediation” and “disagreement resolution” (DR) as a way of setting out 2 separate processes to help early resolution of SEND disagreements. (11.5)

1. Mediation

- For matters which can be appealed to the Tribunal (11.17)
- For matters relating to health and social care elements of an EHC plan (but which cannot be appealed to Tribunal) (11.17)
- For disagreements that are EHC plan related: LA decision not to carry out an EHC assessment; decision not to draw up a plan; decision not to amend a plan; decision to cease a plan; contents of a final or amended plan (11.13)
- Is voluntary for parents / young people but compulsory for LA (education and social services) as well as health services at EHC plan stage (11.27 and 11.34)
- Must take place within 30 calendar days from mediation adviser informing LA that parent/young person wish to go to mediation (11.26)
- Right of appeal to tribunal is not affected
- Where parents / young people wish to make an appeal to tribunal, they need to have contacted a Mediation Adviser and obtained a Certificate (11.23)

Note: Health and social care provision which educates or trains = special educational provision and can be appealed to tribunal. Therefore P/YP needs to take mediation advice.

2. Disagreement Resolution

- For all children and young people with SEND (not just those who are assessed for, or have an EHC plan)
- DR is voluntary for all parties
- No obligation by P/YP to contact mediation adviser
- For disagreements between P/YP and LA and / or education institutions (from early years to FE colleges and including academies and free schools) about how they carry out their EHC duties.
- For disagreements between P/YP and education providers about the special educational provision made for the child / young person.
- For disagreements between P/YP and CCGs or LA's about the health and social care provision – at any stage including EHC needs assessment or re-assessment stage
- For disagreements between LA's and health commissioning bodies in relation to the EHC planning process. These arrangements do not include P/YP