



KIDS SEND Mediation and Disagreement Resolution

Information for Education, Health and Social Care Professionals taking part in SEND Mediation and Disagreement Resolution (DR)

This brief guidance covers:

- What is Mediation and Disagreement Resolution (DR)?
- When can they be used?
- Who can refer?
- Who attends?
- How do I take part?
- Best practice

What are Mediation and Disagreement Resolution (DR)?

Mediation and DR are non-adversarial “informal” disagreement resolution processes which help resolve disputes early, quickly and without much paperwork in a safely managed way. They provide an alternative to tribunal / court proceedings and aim to find practical solutions to disputes whilst maintaining or re-building relationships between parties. Mediation and DR are confidential processes and conclude in written and signed agreements which form a contract between parties.

An independent and impartial Mediator facilitates the meeting, which usually lasts around 2.5 hours and takes place at a local venue. The Mediator makes sure everyone can have their say and are listened to. The Mediator does not take sides, decide who is “right” or “wrong” or impose decisions. The KIDS casework team and mediators help participants prepare for the meeting.

The focus of mediation and DR is on the child or young person, present and future, on issues rather than the people representing them and on collaborative work to find solutions.

The Children and Families Act 2014 introduced Mediation for disagreements that can be appealed to the Tribunal, whereas other SEND related disagreements fall under DR. When you are invited to participate, we will explain whether it is Mediation or DR.

The 2-year SEND Tribunal Pilot starting in April 2018 (tribunal can make non-binding recommendation for health and social services in addition to binding rulings for education) is likely to lead to increased involvement of health / social care staff in SEND Mediation and DR as a more collaborative way of resolving disagreements and avoiding lengthy and complex tribunal hearings.

When can mediation and disagreement resolution be used?

- SEND related disagreements (typically between parents/young people and education provider and / or local authority as well as health and social care if they are involved with the child / young person (age 0 to 25). Further information: <https://www.kids.org.uk/regional-mediation>
- Disagreements about Continuing Care for children and young people up to age 18 (in some CCG’s we work with – please check with us).
- Disagreements between agencies (these do not involve the parent, child or young person) – for examples disagreements about funding.

Who can refer?

Most referrals are made by parents/carers and young people. However, all parties involved in a SEND related disagreement can make direct referrals to the service, for example LA, CCG, Social Care, Education Provider, SENDIASS (on behalf of the P/YP). This includes referrals for looked after children or young people leaving care. If the referral is for a LAC, please let us know.

If you want to make a referral, please let the P/YP know that you will do so, and that KIDS will contact them to confirm that they are happy for the referral to be made and to explain next steps.

Who attends Mediation and Disagreement Resolution?

Participation in Disagreement Resolution is voluntary for everybody involved. When having received a referral, KIDS will check with others whether they want to take part.

By law, the LA must take part in SEND Mediation if the parent/young person has requested it. Equally, health care and social care staff must attend Mediation if the disagreement is about the contents of the final EHC Plan and includes health and / or social care issues.

LA and CCG Representatives must have full decision making power to resolve issues on the day of the Mediation or DR meeting.

In discussion with the parties, the mediator will confirm who needs to be at the Mediation / DR meeting. There may be as few as 3 and as many as 10 people, but typically around 6.

Preparing for the Mediation or DR meeting

Once a mediation / DR meeting date has been agreed, the Mediator will contact you and introduce him / herself. They may wish to arrange for a longer telephone conversation to prepare a mediation summary. The summary sets out your views of the key disagreements and what you wish to achieve. When time permits, these summaries are exchanged before the meeting so that everybody is clear of what will be discussed and can prepare accordingly. Professionals do not always have time to provide a summary. Please let the mediator know if that is the case.

The Mediator will ensure everybody has a clear understanding of their role: the parties to negotiate and make agreements, others to provide knowledge and expertise of the child / young person / issues to help inform decisions. They are not there to be a “witness” for either party.

At the Mediation or DR meeting

Please make sure to arrive well in time for the meeting. The Mediator will typically have brief individual pre-meetings with parties and sometimes other participants. This is an opportunity to raise concerns or ask questions in confidence and you can always ask for a private pre-meeting.

Before the joint meeting starts, the Mediator will ask everybody to sign a pre-mediation agreement. This sets out rules about note taking, confidentiality etc. The Mediator will start with introductions, explain the purpose of the meeting and set out the ground rules. After that, the Mediator will invite the parties and others attending to make brief “opening statements”. The Mediator facilitates the meeting and ensures everybody has the opportunity to give their views and ask questions to gain common understanding of issues. People can ask for a break at any time.

The Mediator will help parties consider options and possible solutions before they start reaching agreements. The agreements are recorded by the Mediator. The form is signed by those who made agreements, and a copy given to everybody. Participants can fill in an evaluation form at the meeting or later electronically. A typed agreement is sent to all participants.

Best practice - preparing and participating in Mediation and Disagreement Resolution:

- Respond to request for mediation dates quickly – 3 working days if possible
- Send a representative with full decision making power: agreements have to be signed on the day of the Mediation / DR meeting
- Make yourself available for a telephone conversation with the Mediator and tell the Mediator if this is your first Mediation/DR. Ask as many questions as you like.
- If possible, prepare a brief mediation summary or ask the Mediator to prepare this for you following your telephone conversation
- Do your “homework”, i.e. have knowledge of the issues to be discussed
- Come to mediation ready to listen, to work together and to help find solutions
- Fill in the KIDS evaluation form

Does KIDS Mediation and Disagreement Resolution work?

Around 85% of our mediation meetings reach agreement and user evaluations show 98% of satisfaction / high satisfaction with our service and mediators.

Please note:

- You can contact the casework team or your Mediator at any time if you want to ask questions or have concerns about something.
- *It is very important that people adhere to the agreements they have made.* Whilst it is very rare that this is not the case, please contact the casework team if there is a problem.
- If you ever feel that the mediation did not go as well as you expected, please contact the service manager directly: susanna.diegel@kids.org.uk.
- You can contact the service at any time to discuss in confidence whether an issue would be suitable for Mediation or Disagreement Resolution.

Telephone 03330 062 835 or email: senmediation@kids.org.uk

This guidance was written in partnership with Norfolk SENDIASS and Norfolk CCG's.