



#12 Disagreement Resolution

Frequently asked questions for parents and young people

These Frequently Asked Questions have been prepared to provide a summary of the key duties on local authorities following the introduction of the Children and Families Act 2014. They are not to be treated as providing legal advice and should be used as a guide only.

If legal advice is required contact SEN4You directly on 01908 082422 or Advice@SEN4You.co.uk

KEY PROVISIONS

- Section 57 of The Children and Families Act 2014
- The Education (Special Educational Needs and Disability) Regulations 2014
- Chapter 11 SEN and Disability Code of Practice 2014

What is disagreement resolution?

Disagreement resolution is an effective way to resolve a dispute. It is a voluntary, confidential process, where people involved in conflict are helped by an independent specialist mediator to resolve their problems collaboratively. The goal of disagreement resolution is for the parties to speak with each other in an open and honest manner to try and reach a resolution that is acceptable to all parties in dispute.

This process can provide a quick and non-adversarial way of resolving disagreements. Used early in the process of an Educational, Health and Care (EHC) Needs Assessment and EHC Plan development, they can prevent the need for mediation once decisions have been taken in that process and a risk of appeal to the Tribunal is opened up.

Is there a difference between mediation and disagreement resolution?

Yes there is. While 'disagreement resolution' and 'mediation' are often used interchangeably, under the Children and Families Act 2014 they refer to different processes. Disagreement resolution refers to SEN non Tribunal matters and could be invoked at any time. It is a voluntary process and there is no requirement to have to consider disagreement resolution for SEN non Tribunal matters.

Whereas mediation is a process that is invoked where a parent or young person intends to appeal the contents of their Education, Health and Care (EHC) Plan a decision not to assess to the First Tier Tribunal.

What does disagreement resolution cover?

Disagreement resolution arrangements cover all children and young people with SEN, not just those who are being assessed for or have an EHC Plan and a range of disagreements. They are available to parents and young people to resolve disagreements about any aspect of SEN provision and health and social care disagreements during the processes related to EHC Needs Assessments and EHC Plans.

The disagreement resolution arrangements are designed to resolve disagreements about:

- a) The performance of duties; and
- b) SEN provision.

When is it appropriate to use disagreement resolution?

Disagreement resolution services can be used at any time if all parties agree. The disagreement resolution arrangements cover all children and young people with SEN, not just those who are being assessed for or have an EHC Plan. The disagreement resolution service is to help resolve four types of disagreement or to prevent them from escalating further:

- Disagreements between parents/young people and local authorities, education providers, 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;
- Disagreements between parents/young people and education providers about the special educational provision made for a child or young person, whether they have EHC plans or not;

- Disagreements between parents or young people and Clinical Commissioning Groups or local authorities about health and social care provision during EHC Needs Assessments, while EHC Plans are being drawn up, reviewed or when children or young people are being reassessed;
- Disagreements between services i.e. local authorities and health commissioning bodies during EHC Needs Assessments or reassessments, the drawing up of EHC Plans or reviews of those plans for children and young people with SEN.

It is most likely that you would access the service after having tried to resolve any disagreement through the arrangements available locally, such as meeting with the special needs co-ordinator of the school, talking to your named SEN Officer or accessing your local Parent Partnership Service.

How can disagreement resolution help?

Disagreement resolution can help:

- Improve communication between parents/carers, educational settings, health services and local authorities;
- Bring the right people and information together;
- Provide a safe, secure environment to allow communication to take place freely;
- Focus people on the issues and needs;

- Rebuild the trust between parents/carers, educational settings, health services and local authorities so that they can share their knowledge of the child or young person and their concerns to find the best outcome for all involved.

Does the local authority have a duty to provide disagreement resolution services?

Yes. Local authorities must make disagreement resolution services available to parents and young people. However, the use of the disagreement resolution services is voluntary and has to be with the agreement of all parties.

Local authorities must make the availability of disagreement resolution services known to parents, young people, headteachers, governing bodies, proprietors and principals of schools and post-16 institutions in their areas and should make them known to others they think appropriate. Details of the disagreement resolution arrangements must be set out in the Local Offer.

Can the local authority commission disagreement resolution services from internal services like Parent Partnership?

No. 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. Thus, Parent Partnership is not able to offer any role as mediators or providers of disagreement resolution services.



What happens if a parent or young person requests disagreement resolution?

The local authority has a duty to consider the request and if it decides to engage with the request then it must notify the service provider that it has contracted to provide disagreement resolution services.

Is agreement required from all parties for disagreement resolution to take place?

Yes. The use of the disagreement resolution services is voluntary and has to be with the agreement of all parties.

Are there any timescales that have to be adhered to?

No. Unlike mediation there are no prescribed timescales that need to be followed.

Is there a cost to parents and young people?

No. These services are provided free of charge to young people and parents/carers of children with SEN. It is paid for by the local authority as directed by the Government.

If a parent or young person decides not to proceed with disagreement resolution does it affect their right to appeal to the tribunal service?

No. A decision by parents or a young person not to use disagreement resolution services has no effect on their right to appeal to the Tribunal. No inference will be drawn by the Tribunal if the parties to a disagreement have not used the disagreement resolution services. Disagreement resolution meetings are confidential and without prejudice to the Tribunal process and the Tribunal will disregard any offers or comments made during them. Partial agreement achieved by use of disagreement resolution services can help to focus on the remaining areas of disagreement in any subsequent appeals.

