

Essential Mediation

resolution wrapped up

Special Educational
Needs Mediation:
Disagreement resolution
and pre-tribunal mediation
service for Local Authorities



independent
impartial
confidential

www.essentialmediation.co.uk

At a time of increasing legal challenges and as the costs of litigation become prohibitive, mediation is becoming an increasingly popular and important method of dispute resolution.

Essential Mediation is a specialist practice that provides independent, impartial and confidential mediation services to resolve disputes around Special Educational Needs (“SEN”) provision. We provide general disagreement resolution services to assist with the resolution of disputes outside of an appeals process, as well as specific pre-tribunal mediation once a parent or young person has indicated an intention to lodge an appeal

Essential Mediation is committed to promoting mediation as a viable alternative to the excessive personal cost in stress, time and money caused by unnecessary litigation, lack of effective communication and unresolved conflict.

What is mediation?

Mediation 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 mediation 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.

The mediator uses techniques to facilitate communication, problem solving and negotiation between the parties in a safe and constructive environment, and deploys them from a position of independence and neutrality making progress possible.

The mediator never takes sides or tells the parties what to do, but helps the participants reach a solution that they are happy with which is then drawn up into a written agreement.

Special Educational Needs (SEN) Disagreement Resolution and Mediation

Disputes between parents and local authorities concerning the provision to be made for children with special educational needs (SEN) can be contentious, resulting in appeals being made to the Special Educational Needs Tribunal. This can be a costly, drawn out process for all parties and may result in strained relations thereafter which are not in the child’s interests.

The Government requires all local authorities to provide an independent mediation service to help when parents/ carers and the local authority cannot agree on how to meet a child’s special educational needs.



The SEN mediation service is delivered in accordance with the requirements of the Special Educational Needs and Disability Act 2001, the guidance set out in the current SEN Code of Practice (2001) and in preparation for the new legislation arrangements. This means that you can be assured that our service is delivered to nationally recognised standards and in accordance with legislation and guidance.

How can mediation help?

This process:

- Ensures the relevant people and information are brought together;
- Provides a safe, secure environment to allow communication to take place freely;
- Focuses people on the issues and needs;
- Helps overcome deadlock and emotional blockages;
- Assists the negotiation and makes all parties part of the solution;
- Rebuilds and safeguards relationships.

What is the mediation process?

Following initial contact from one or both of the parties the mediator will contact the parties by telephone to introduce him / herself, to ascertain a brief outline of the dispute(s), to set a date for the meditation day and deal with any preliminary queries.

A proposed Mediation Agreement form will be prepared and circulated to the parties for approval. Each party will be invited to provide the mediator with a summary of the issues in dispute along with any other relevant documents so that the mediator can have some background information prior to the mediation day itself.

The mediation day usually starts between 09.00 and 10.00. There is no formal structure to the mediation day, unlike that of a tribunal or court hearing. The day will normally begin with an individual meeting between the mediator and each party when the mediation agreement is signed (if not already) and the format of the day is discussed. Normally this is followed by a joint meeting at which time each party sets out their views on the dispute and the mediator can confirm the ground rules and establish an agreed way of working forward.

Throughout the course of the day, the amount and type of meetings will vary according to the needs of the parties and the organisation which the mediator believes will be most effective. The mediation will continue until either a resolution has been reached, the parties agree to take a break and resume on another occasion, or one party chooses to abandon the mediation process.



Why mediate?

Very few SEN tribunal appeals are resolved through mediation despite the fact that approximately 35% of appeals are either conceded or withdrawn before a final hearing. Often these are conceded in close proximity to a hearing resulting in wasted costs and time both for the local authority, parents and the tribunal.

Parents can also pay between £10,000 - £20,000 on legal fees and professional disbursements and not end up with the desired result for their child. Effective mediation provides a cost effective alternative and is something that parents and local authorities should actively pursue before their positions become entrenched.

In our experience, SEN mediation services offered by local authorities can be ineffective because:

- Few mediators have direct experience of SEN Law and practice and have never attended a tribunal hearing. Therefore, they may not have the specialist knowledge required to navigate through a complex and sometimes contentious system;
- Neither party understands the mediation process and the role of the mediator as this has been poorly explained. Therefore, parties end up mediating for the sake of it and not using mediation properly;
- There is limited or no personal contact between the mediator and the participants before the mediation day;
- The mediation is not properly prepared or managed, and can therefore be “hit” and “miss” depending on who the mediator is;

- Neither party is prepared to compromise and thus mediation should not have been pursued in the first place;
- An increasing number of mediators attempt to conduct a quasi-tribunal hearing. This is not the role or purpose of the mediator or the mediation process.

Why appoint us

At Essential Mediation, we can provide an alternative to the mediation services currently offered as follows:

- Mediators who have worked directly within the SEN legal framework and understand the complexity of the issues from the perspective of parents, the local authority and the school;
- Mediators who have direct experience working with parents, schools, and professionals;
- Mediators who have direct experience of appearing before the Special Educational Needs and Disability Tribunal and therefore have the required knowledge and expertise to be able to effectively mediate disputes;
- A process facilitated solely by a mediator and not an administrative assistant.

Services we provide

At Essential Mediation we provide a fully inclusive mediation and disagreement resolution service which includes:

- Individual mediations and disagreement resolution meetings;
- The provision of dedicated and specialist mediators with experience of the SEN framework and an understanding of the legal framework;
- The administration of the mediation process, including arranging a suitable and accessible venue, contact with the parties before and after mediation and drafting a mediation agreement;
- Mediation telephone information line;
- Mediation information pack for parents, schools and local authority officers;
- Mediation and disagreement resolution services delivered through specialist packages;

Mediation packages

In SEN disputes, local authorities are required to provide and fund independent mediation and disagreement resolution services for parents and young people and in future will be required to fund parental expenses. Therefore, it is essential that where mediation is engaged it is cost effective, accessible for parents and will be outcome focussed such that it will not be used where neither party is prepared to compromise.

Essential Mediation offers local authorities a range of packages to suit their individual requirements;

- Gold;
- Silver;
- Bronze;
- Individual mediation and disagreement resolution sessions;
- Mediation telephone information service.

Local authorities can subscribe to one of our packages either as an individual local authority or in collaboration with other local authorities so that the expense can be shared.





If you would like further information regarding the cost of mediation and the subscription packages on offer then please contact us by email: admin@essentialmediation.co.uk or call: 01908 246023

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