

The Special Educational Needs (Mediation) Regulations

Citation, commencement and application

1.—(1) These Regulations may be cited as the Special Education Needs (Mediation) Regulations and come into force on 1 September 2014.

(2) These Regulations apply in relation to England.

Interpretation

2. In these Regulations –

“the Act” means the Children and Families Act 2014;

“Appeals Regulations” means the Special Education Needs (Appeals) Regulations;

“working day” means any other day than (a) a Saturday or Sunday, (b) Christmas Day or Good Friday or (c) a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

Giving Notice

3.—(1) A notice given to a child’s parent or young person by the local authority under the Appeals Regulations must inform the parent or young person that he or she may only make an appeal (other than an appeal falling within section 52 (2) of the Act^a) if a mediation adviser^b has issued a certificate under section 52(4) or (5) of the Act.

(2) The notice must also—

- (a) inform the parent or young person of the timescales for mediation;
- (b) explain how the parent or the young person may contact a mediation adviser to receive information about mediation and the provision of advocacy services which are available in the area of the local authority; and
- (c) give the telephone number, address and email address of at least one mediation adviser.

Certificate under section 52 (4) of the Act

4. The mediation adviser must issue the certificate to the parent or young person under section 52(4) of the Act within 3 working days of the date on which the parent or young person informed the mediation adviser that he or she does not wish to pursue mediation.

5. A certificate under section 52 (4) may not be issued where a parent or young person has not contacted a mediation adviser within [2] months of the date of the notice.

Certificate under section 52 (5) of the Act

6. The mediation adviser must issue the certificate under section 52 (5) of the Act within 3 working days of conclusion of the mediation.

a An appeal falls within Section 52(2) of the Act where the appeal concerns only:-

- (a) the school or other institution named in an EHC plan;
- (b) the type of school or other institution specified in an EHC plan;
- (c) the fact that an EHC plan does not name a school or other institution.

b Mediation adviser is defined in Section 52(8) of the Act.

Duty on local authority to make arrangements for mediation

7.—(1) Where the parent or young person informs the mediation adviser that he or she wishes to pursue mediation, the mediation adviser must inform the local authority within 3 working days of receipt of that information.

(2) The local authority must make arrangements for the appointment of a mediator and for the mediation to take place within 30 calendar days of being informed by the mediation adviser.

(3) The local authority must inform the parent or young person of the date and place in which the mediation is to take place.

(4) The information in paragraph (3) must be provided to the parent or young person at least 5 working days prior to the date of the mediation, provided that the parent or young person may agree to a shorter period of notice.

8.—(1) Where a local authority is unable to arrange for the mediation to take place within 30 calendar days, the authority must notify the mediation adviser as soon as possible.

(2) Where paragraph (1) applies, it will be deemed that the parent or young person has participated in mediation and the mediation adviser must issue a certificate to this effect within 3 working days of notification by the local authority.

Mediation meeting

9. The following persons may attend a mediation meeting—

- (a) the parent or young person and any advocate or other supporter he or she wishes attend the mediation;
- (b) where the parent is a party to the mediation, the child may attend the mediation with the agreement of the parent and the mediator.
- (c) any other person so long as both parties to the mediation agree, and in the event that the parties are unable to reach an agreement, the mediator shall determine the matter.

10. Where the parent is a party to mediation the mediator must take reasonable steps to ascertain the views of the child about issues raised by the appeal.

Expenses etc.

11. The local authority shall pay the following expenses—

- (a) reasonable travel expenses;
- (b) expenses incurred in relation to [] up to a limit of [£];
- (c) expenses incurred in relation to [] up to a limit of [£].

Training etc.

12. Mediation advisers and mediators must have significant knowledge of the legislative framework relating to special education needs.

Steps to be taken by local authority after mediation meeting

13.—(1) Unless the parties agree to the contrary, where the mediation reaches an agreement, regulation 6 of the Appeals Regulations shall apply as if the mediation agreement had been ordered by the First-tier Tribunal.

(2) Any other amendment to the EHC plan, or other provision which is agreed in writing between the parties at a mediation meeting must be made within [2] weeks unless the parties have expressly agreed otherwise.

Exception to the requirement to obtain a mediation certificate

14. A parent or young person may proceed with their appeal in the absence of a mediation certificate where an application has been made to the First-tier tribunal under its case management powers (Rule 5 of the Tribunal Procedure Rules 2008) and the First-tier Tribunal directs that the appeal can proceed in the absence of a mediation certificate.