

## **SECTION 12: DISAGREEMENTS, APPEALS, MEDIATION AND TRIBUNALS**

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## About this Section

12.1 This Section of the SEN Code of Practice (the Code) focuses on the practical arrangements for the following:

- **With a view to avoiding and resolving disagreements** about the exercise of the EA or Boards of Governors functions within the Special Educational Needs and Inclusion Framework (the SEN Framework) under Part II of the Education (Northern Ireland) Order 1996 (the 1996 Order) and about a child attending a school who has, or may have, SEN.
- **Mediation** following EA decisions which carry a right of appeal.
- The requirements on the EA with regard to **appeals** to the Special Educational Needs and Disability Tribunal (SENDIST).

### **This Section of the Code is underpinned by:**

- Article 8(1)(f) - a duty on the Board of Governors of an ordinary school to secure that parents of children who are of compulsory school age and who are registered at the school and who have, or may have, special educational needs (SEN) or young people (who have, or may have, SEN) are informed about the arrangements made under Article 21B(1), which relate to disagreements between the Education Authority (EA) or Board of Governors (on the one hand) and parents or young people (on the other).
- Article 21B (Resolution of disputes).
- Article 21C (Information and Advice as to mediation in connection with certain appeals), supported by draft regulations:
  - 34 (Information to be included in Notices sent by the EA);
  - 35 (Mediation certificates in connection with certain appeals);
  - 36 (Mediation);
  - 37 (Where a person fails to contact the mediation adviser);
  - 38 (Attendance at the mediation);
  - 39 (Training and experience of mediators);

- 40 (Mediation Agreement);
- 41 (Compliance with Tribunal Orders – prescribed period);
- 42 (Unopposed appeals – prescribed period); and
- Draft Schedules 1 (Additional information to be contained in notices) and 3 (Compliance with Tribunal Orders and unopposed appeals).
- Article 17 (Appeal against decision not to make a Statement) supported by draft regulation:
  - 14(9) (Time limits and prescribed information relating to assessment).
- Article 18 (Appeal against contents of Statement)
- Article 18A (Unopposed appeals)

(of the Education (Northern Ireland) Order 1996)

**Key point: See the Glossary for the definition of the key terms used in this Code.**

## Introduction

12.2 From time to time disagreements may arise within the SEN Framework between a relevant party and the school at which a child is a registered pupil or between the relevant party and the Education Authority (EA). Such disagreements may be about a child who has, or may have, SEN, or may be about the impact a child with SEN is having on the efficient education of other children. Under **Partnerships with Parents and Young People** (see paragraphs beginning 3.59) and the **Views of the child** (see paragraph 3.68 and 3.69), schools have a responsibility to liaise closely with regard to children **who have, or may have, SEN**.

12.3 Good communication, understanding of concerns and consensual agreement to share information between appropriate parties, is key to establishing good relationships and avoiding or minimising areas of disagreement. Engagement with the relevant party about concerns regarding a child's performance will help address possible areas of disagreement for a child whose difficulties may not be SEN.

12.4 Whole school educational provision, aimed at helping the child make adequate progress, should be considered at an early stage to address concerns surrounding a child who is experiencing difficulty in learning. As well as addressing a child's difficulty in learning, this approach may effectively help prevent potential problems escalating into major disagreements. The aim must always be that practical solutions are reached quickly, ensuring minimum disruption to the child's education.

12.5 Early resolution of disagreements can benefit the child and the relevant party avoiding unnecessary stress. The EA's arrangements for providing **Advice and Information** (see Section 11), can provide access to impartial, confidential information and advice to help the relevant party make informed decisions.

### **The EA Arrangements for Avoiding or Resolving Disagreements**

12.6 Under Article 21B of the 1996 Order, the EA is required to put in place arrangements with a view to avoiding or resolving:

- a) disagreements between the EA or the Board of Governors of grant-aided schools (on the one hand) and young people or parents of other children (on the other), about the exercise by the EA or Boards of Governors of their functions under the SEN Framework; and
- b) in each relevant school, disagreements between a young person or the parent of any other child who is a pupil attending the school and has special educational needs and the Board of Governors or proprietor of the school, about the special educational provision made for that child.

12.7 In the case of sub paragraph 12.6 a) above, for example, there may be a situation where a parent of a child is concerned that their child's education is being negatively impacted by the EA or the Board of Governors' actions, taken in accordance with the exercise of their functions under the SEN Framework. A relevant point is that a child, who has a 'Statement of Special Educational Needs' (a Statement), shall be educated in an ordinary (or mainstream

school) unless that is incompatible with the wishes of the young person or their parent in any other case or the provision of efficient education for other children. (See paragraphs starting at 14.38). While, in the first instance, a parent may speak directly to their child’s class teacher or Learning Support Co-ordinator (LSC), a parent may choose to talk about the issue with someone outside the school environment. Having the opportunity to discuss with an independent person, through the EA’s arrangements for dispute avoidance and resolution (hereafter referred to as “dispute resolution”), may be beneficial to the young person, the parent, the school and/or the EA, allowing everyone to air concerns and agree the best way forward to ensure that the needs of all children are met.

12.8 In the case of subparagraph 12.6 b) of this Code, for example, a disagreement may relate to the special educational provision being made, or not being made, for a child by a Board of Governors.

12.9 In making the arrangements for dispute resolution, the EA is required to have regard to the 1996 Order, the SEN Regulations and any guidance provided by the Department, whether through this Code or otherwise.

12.10 The features of the arrangements for dispute resolution are set out in the summary table below followed by further guidance on the responsibilities of the EA and schools in its delivery.

**Information Box 12.1: Dispute Resolution – Summary Table**

Dispute Resolution - Summary Table	
<b>Legal Basis</b>	Article 21B (Resolution of disputes) (1) and (2) of the 1996 Order.
<b>Purpose</b>	To avoid or resolve disagreements between the EA or Boards of Governors and a young person or a parent of other children about the exercise by the EA or Boards of Governors of their functions as detailed in the 1996 Order (the SEN Framework). Also to avoid or resolve, in each relevant school, disagreements between a child over compulsory school age or the parent of any other child who is a pupil attending the school and has special educational needs

	and the Board of Governors or proprietor of the school about the special educational provision made for that child.
<b>Independence</b>	The EA's arrangements for dispute resolution is required to involve the appointment of independent persons who will facilitate the avoidance or resolution of disputes or act as a mediator (independent in this context is detailed in the 1996 Order and means 'a person is not independent if he or she is employed by the EA').
<b>Status</b>	Informal means of resolving disputes.
<b>Who Provides</b>	Independent persons (who are not employees of the EA)
<b>Who can use</b>	Young person or a parent of a child with special educational needs or the parent of any other child.
<b>Who can participation</b>	The school at which a child is registered or a member of staff from the EA. Participation by a school or the EA is voluntary, however, both the EA and schools are encouraged to participate in order to resolve the issue in question as this would be in the best interests of the child.
<b>Information</b>	Supplied by the Board of Governors of all grant-aided schools and the EA through the EA's arrangements for the provision of advice and information and the EA's plan of arrangements for special educational provision and relevant Notices issued to young people or parents.
<b>Format</b>	No set format. However, if a meeting between parties is required, it is to be held at a suitable location that allows for free and frank discussion aimed at resolving the matter giving rise to the dispute.
<b>Timescales</b>	No statutory timescales. Timescales will be determined by the EA and any associated contract to deliver the required arrangements for dispute resolution. Such timescales should be well known and the EA's arrangements for the provision of advice and information should detail the timescales. All timescales should seek to deal with disputes as soon as is reasonably practicable.

## Dispute Resolution

12.11 Under Article 21B of the 1996 Order (see paragraph 12.6), the purpose of the required arrangements is to provide the relevant party with an independent means of avoiding disputes and resolving disagreements with a child's school or the EA about:

- the exercise of their functions under the SEN Framework; and
- children who have, or may have, SEN.

12.12 The duties and functions of schools' Boards of Governors and the EA, with regard to children who have, or may have, SEN, are set out in **Section 2**. The main functions form the basis of the practical guidance in this Code and while not exhaustive, this would include:

- **Board of Governors** - Taking all reasonable steps to identify and provide for those children who have SEN (see paragraphs 2.33 and 2.34) and the preparation and review of a Personal Learning Plan (PLP) for the child with SEN (see paragraphs beginning at 3.75).
- **EA** - The EA plan of arrangements for special educational provision including resources and the information and advice services the EA proposes to make available in order to discharge its functions regarding the practical delivery of special educational provision for a child - see paragraphs 2.17 and 2.31.

## Principles of Dispute Resolution

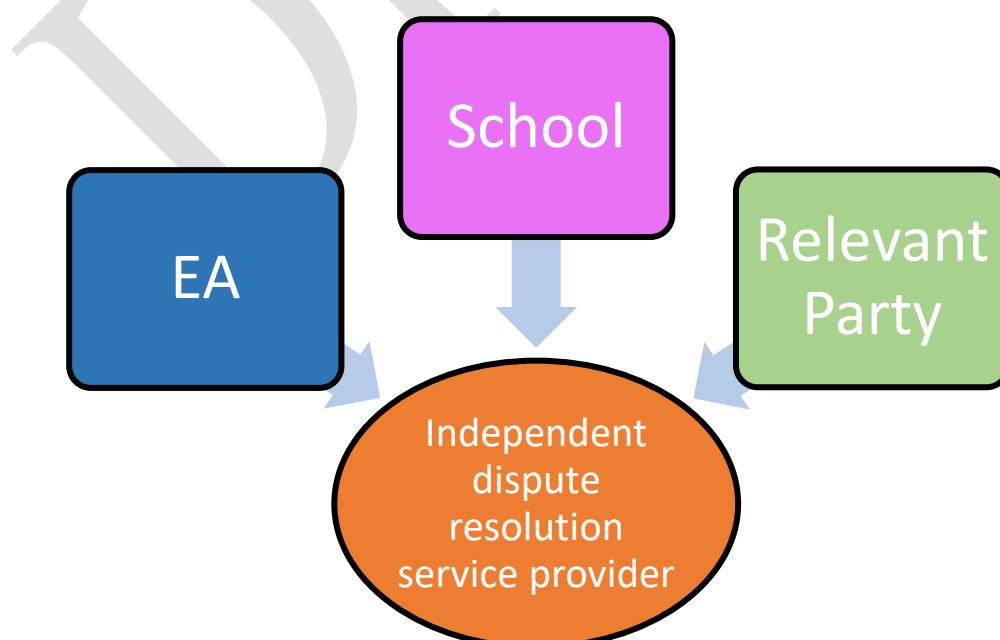
12.13 The main aim is to resolve differences quickly and in an informal manner. The principles within the dispute resolution process are:

- a) the focus is on the nature of the disagreement;
- b) decisions about provision for children with SEN or disabilities, should be made

jointly by the school, the relevant party, the EA and also be informed by the views of the child, as appropriate;

- c) relations between the EA, schools, the relevant party, other agencies and, where appropriate, children, should be underpinned by open communication. The knowledge and experience of the relevant party and the views of the child can be used to support good decision-making. They should know where they stand in the decision making process and why decisions have been made;
- d) the relevant party and children should be given information and support to enable them to participate in the decision-making and complaints processes. (See section 11). Support can also be provided by statutory or voluntary organisations;
- e) the school and the EA are required to make the relevant party aware of the arrangements; and
- f) the independent provider(s) of dispute resolution should keep the relevant party and the school (or as appropriate the EA), updated throughout, so that help can be sought with any potential disagreements, as and when they arise.

**Diagram 12.1: Parties Who May be Involved in Dispute Resolution**





## **Independence of Dispute Resolution**

12.14 Independent arrangements are required to be made by the EA. In making the arrangements for dispute resolution and mediation (see paragraphs starting 12.23), the EA is required to ensure that those appointed to provide the service:

- a) are independent of the EA, that is, not a member of staff employed by the EA;
- b) have no role in the decisions taken about a particular child's case;
- c) have the appropriate skills and experience in disagreement resolution;
- d) receive the appropriate training and development to enable them to carry out their role effectively;
- e) have knowledge of SEN practice, procedures and legislation in Northern Ireland;
- f) have no vested interests in the outcome of the agreements; and
- g) are unbiased, maintain confidentiality and conduct the resolution of the disputes and disagreement process quickly and in accordance with the standards (the contract) set by the EA including required timescales.

## **The Status of, and Participation in Dispute Resolution**

12.15 The independent dispute resolution arrangements provide an informal way to allow the consideration of the area of disagreement, explore differences, identify points of agreement and find a way forward that all parties will accept.

12.16 The decision to participate is voluntary both on the part of the relevant party **and** the school involved or the EA. The relevant party may seek the help of the dispute resolution arrangements put in place by the EA, if previous attempts to avoid or resolve an issue have not been successful. For example, a parent may have a concern about

their child having SEN and for whatever reason, this may not have been identified or acted upon by the child's school. Being able to make use of independent resolution arrangements gives the parent an opportunity to discuss the situation in an open and frank manner and hopefully find an agreeable solution to the issue. While participating in dispute resolution is voluntary, a school or the EA may choose not to participate. However, all are encouraged to engage in the process as resolving the dispute is in the best interests of the child.

### **Information about Dispute Resolution**

12.17 To fulfil its duty with regards to dispute resolution, the EA is required to make arrangements for the delivery of this independent service, ensuring the contact details are made known to parents, young people, children, schools and other appropriate potential participants. The EA is expected to use a range of measures to advertise the dispute resolution arrangements, their purpose and how to access any service put in place. These measures should be included in:

- a) the EA's SEN policy (under Article 6 of the 1996 Order as amended);
- b) the EA's Plan of arrangements (Article 6A 1996 Order) for special educational provision;
- c) the EA's arrangements for the provision of advice and information provided directly to the child who has SEN or to the parent of any child with SEN (Article 21A 1996 Order - also see Section 11);
- d) any guidance materials for parents, young people and children (see Section 11); and
- e) any specific Notices it issues relating to the child with SEN.

12.18 Schools are required to inform parents and young people of the independent dispute resolution arrangements made by the EA.<sup>1</sup> This is particularly important for those children who have, or may have, SEN of whom the EA has no knowledge. Schools should ensure that the dispute resolution arrangements are included within their SEN policy and use any guidance/leaflets provided by the EA or the service provider for this purpose.<sup>2</sup>

**Key point: The Board of Governors at an ordinary (mainstream) school has a duty to inform the relevant party of the arrangements for dispute avoidance and resolution.**

*Article 8 of the 1996 Order*

### **Service Provider**

12.19 Ultimately, the EA is responsible for the overall service standards under which the independent dispute resolution arrangements operates. The EA should put in place appropriate mechanisms to monitor, evaluate and review the delivery of these arrangements. The EA should respond to requests from the Department regarding the uptake and effectiveness of the arrangements. Tied in to the EA's plan of arrangements for special educational provision (see paragraphs starting at 2.17), it is expected that the EA should include an annual review of the arrangements for dispute resolution. In addition the EA:

- a) should have clear funding and accountability arrangements for the independent dispute resolution arrangements (ensuring the service stays within budget);
- b) should have monitoring and evaluation arrangements in place to ensure its neutrality and independence;
- c) are required to make sure that the arrangements, contact details and how it

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<sup>1</sup> Article 8(1)(f) (Duties in relation to pupils with special educational needs in ordinary school) of the Education (Northern Ireland) Order 1996.

<sup>2</sup> Article 9 (Determination by Boards of Governors of policy in relation to provision of education for children with special educational needs) of the Education (Northern Ireland) Order 1996.

will work, are made known to the relevant party, schools and others they consider appropriate;<sup>3</sup>

- d) should make sure that there are protocols in place for a relevant party considering seeking the assistance of the independent provider of the dispute resolution arrangements;
- e) are required to formally inform the relevant party of the availability, from the EA, of arrangement with a view to avoiding or resolving disagreements in all Notices issued<sup>4</sup> in relation to a statutory assessment, the content of a Statement and the making and maintaining of or the ceasing of a Statement;
- f) should make sure that the relevant party is informed that entering into a DARS process does not affect any relevant right of appeal to the Tribunal; and
- g) should regularly monitor and review the delivery and effectiveness of the dispute resolution arrangements – actively seeking feedback from its users. Lessons learned (from disagreements and disputes) by the service should be communicated to the EA who will determine if further action is necessary.

### **The Format and Timescales of Dispute Resolution**

12.20 On the same basis that every child is an individual, every disagreement will carry a unique set of circumstances. As a matter of good practice, it is expected that the following principles should be followed as all parties progress through the process:

- a) all parties should be agreeable to participation in the process;
- b) any agreement has to be to the satisfaction of all parties concerned;
- c) the process is voluntary and confidential;
- d) the dispute resolution facilitator is independent and impartial;

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<sup>3</sup> Article 21B(6) (Resolution of disputes) of the Education (Northern Ireland) Order 1996.

<sup>4</sup> Draft Schedule 1 paragraph 2((b) (General information to be included in Notices).

- e) those involved (from either the EA or a school) have the authority to make decisions to settle the disagreement and are mindful of the need to achieve early and effective resolution; and
- f) there is a clear understanding that the process does not interfere with or prejudice any rights a relevant party may have to appeal to the Tribunal.

12.21 One of the aims of dispute resolution is to resolve differences quickly and informally. Once the relevant party requests the independent dispute resolution service provider's involvement to resolve a disagreement, the EA should ensure that the service provider makes contact, establishes the facts and commences discussions as soon as is practicably possible.

12.22 Should a meeting(s) be required it should be arranged at a suitable location. It is beneficial if the relevant party who has made contact with the dispute resolution provider is given an opportunity to share their concerns in detail. Following the initial discussion or meeting, contact should be made with all parties to decide the timescales and attendees for any subsequent meetings. Each referral is different, but it will help if all participants attend all meetings to allow parties to feel equal in the process.

### **Mediation Following EA Decisions which Carry a Right of Appeal**

12.23 Under Article 21C of the 1996 Order, the EA is required to make independent arrangements for the delivery of mediation. **No one employed by the EA can be a mediation adviser or mediator (the mediation adviser deals with administrative matters and the mediator is the person who takes part in the mediation).** It is the choice of a relevant party as to whether they wish to pursue mediation but the mediation process is driven by certain requirements and statutory timescales. Mediation is only available if the relevant party has an appeal right. Diagram 12.3 at the end of this Section sets out the mediation timeline and associated steps.

## Information Box 12.2 - EA Requirements in Arranging Mediation

The EA is required to make arrangements for providing mediation to a relevant party who intends to appeal to the Tribunal.

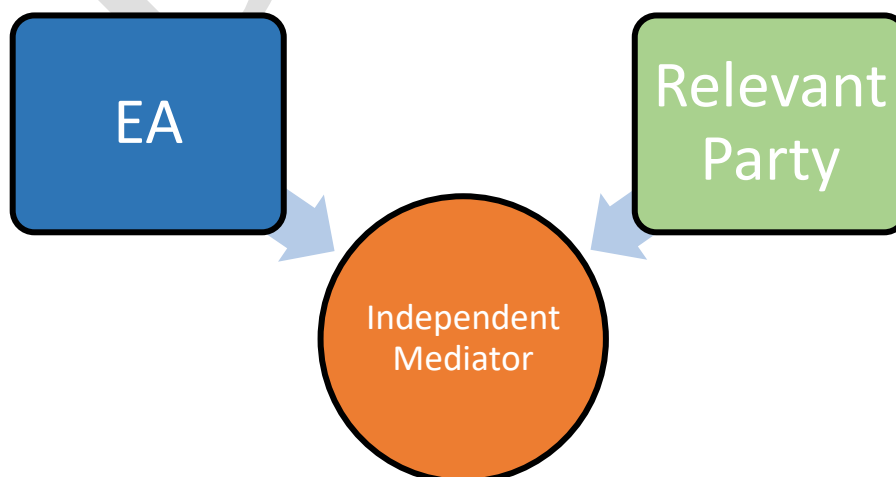
Where a relevant party requests mediation, the EA is required to arrange for and participate in the mediation.

The arrangements made by the EA are required to provide for the appointment of independent person(s) to act as mediator and the mediator cannot be a member of staff employed by the EA.

*Article 21B (3A), (3B) & (4) of the 1996 Order, as amended*

12.24 The SEND Act 2016 introduced mediation, which is to be available to anyone intending to appeal against a decision made by the EA. **Mediation** is only available when the EA has served a decision that carries a **right of appeal to the Tribunal**. Mediation is therefore limited whereas the EA's dispute resolution arrangements have a much wider remit. In practice the arrangements for dispute resolution and mediation may be delivered by the same independent provider. The ultimate aim of both dispute resolution and mediation is to settle disputes and reach agreement between parties involved with regard to the issue(s) concerned. The principles to be followed in the arrangements for mediation are the same as those applicable to the arrangements for dispute resolution. (See paragraph 12.13).

**Diagram 12.2: Parties Who May be Involved in Mediation**



12.25 Mediation can take place if the EA has made one of the decisions set out below. The relevant party is required to obtain a **mediation certificate** from the mediation adviser, if they intend to make an appeal to the Tribunal about certain types of decision which the EA has made. (See paragraph 12.32). The decisions include:

- a) A decision not to carry out a statutory assessment – following the service of an:
  - i. Article 20(3) Notice (request for statutory assessment will have come from young person or parent (in any other case));
  - ii. Article 20A(8) Notice (request for statutory assessment will have come from a school).
- b) A decision not to make a Statement – following the service of an Article 17(1) Notice or an Article 21(5) Notice (child under 2), whichever is appropriate.
- c) A decision relating to the content of a Statement – following the service of a proposed Statement or a proposed amended Statement or a copy of the existing Statement and amendment Notice and a Paragraph 4(2) of Schedule 2 to the 1996 Order Notice.
- d) A decision not to amend a Statement – following the service of an Article 19(1A) Notice.
- e) A decision in the form of a completed Statement or completed amended Statement – following the service of same and a Paragraph 9(2) of Schedule 2 to the 1996 Order Notice.
- f) A decision not to substitute the name of a school with one requested by the relevant party - following the service of a Paragraph 11(3) of Schedule 2 to the 1996 Order Notice.
- g) A decision to cease a Statement - following the service of a Paragraph 13(2) of Schedule 2 to the 1996 Order Notice.

12.26 The features of the arrangements for mediation are set out in the Information Box below and this is followed by further guidance on the responsibilities of the EA and schools in its delivery.

### Information Box 12.3: Mediation Summary

<b>Mediation - Summary Table</b>	
<b>Legal Basis</b>	Article 21B (3A) of the 1996 Order, as amended by the 2016 Act and draft regulations 34 to 40.
<b>Purpose of mediation</b>	To avoid or resolve disagreement regarding appealable EA decisions within the SEN Framework.
<b>Independence of mediation</b>	Mediation is required to be provided by an independent person or persons who are not employed by the EA.
<b>Status of mediation</b>	Informal means of resolving disputes about appealable EA decisions.
<b>Mediation Service Provider</b>	Statutory duty for EA to arrange mediation but person/organisation must not be employed by the EA.
<b>Mediation Service User</b>	Relevant Party (young person or parent in any other case).
<b>Mediation Participation</b>	The Mediator and a member of staff from the EA and the relevant party (with support, if so desired). The EA is required to participate if the relevant party wishes to pursue mediation.
<b>Information providers about Mediation</b>	The EA and the independent mediation adviser.
<b>Form Mediation Takes</b>	If a meeting between parties is required (it would be expected that this would be the norm), it should be held at a suitable location that allows for free and frank discussion aimed at resolving the matter giving rise to the dispute.
<b>Mediation Timescale</b>	Timescales apply as set out in regulations. (See Diagram 12.3).



## Information and Advice in Connection with Certain Appeals

12.27 Following the EA giving 'notice' of a decision that carries an appeal right to the Tribunal, the EA is required to provide the relevant party with current, up to date information and advice about the mediation process. (See Section 11). The Board of Governors of a child's school also has a statutory duty to make sure that this information and guidance is available for parents and young people should this be an option they wish to pursue.

12.28 The EA is required to include information as to mediation arrangements in any Notice (see paragraph 12.25), they serve on the relevant party. The information includes:

- a) the timescales for requesting mediation;
- b) the timescales for an appeal to be lodged;
- c) the contact details of the mediation adviser, whom the relevant party should contact to obtain more information about mediation and the requirements for obtaining a mediation certificate before certain appeals can be made should the mediation not result in a satisfactory outcome (satisfactory in this instance will be determined by the relevant party); and
- d) where a person wishes to pursue mediation, the requirement to inform the mediation adviser about the issues in respect of which they wish to pursue mediation ("mediation issues").<sup>5</sup>

## Mediation Certificates in Connection with Certain Appeals

12.29 Where a relevant party **intends to appeal** to the Tribunal, under any of the specific circumstances as set out at paragraph 12.25, they are required to contact the mediation adviser within **4 weeks** from the date of the Notice which communicated the

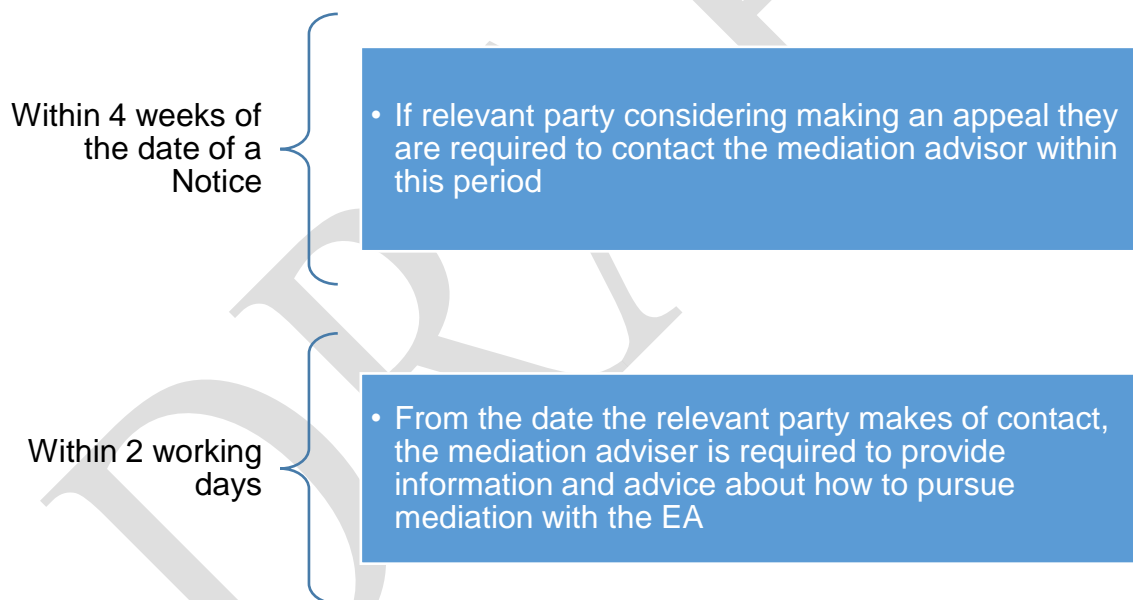
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<sup>5</sup> Draft regulation 34(1) and (2) (Information to be included in Notices sent by the Authority).

EA's decision. The relevant party is required to inform the mediation adviser of their intention to appeal and of the issues concerned.<sup>6</sup>

12.30 Within **2 working days** from the date the relevant party contacts the mediation adviser (the date of contact), the mediation adviser is required to provide information and advice to the relevant party about pursuing mediation with the EA.<sup>7</sup> It is anticipated that this information and advice will normally be provided by telephone where the relevant party can ask questions directly of the mediation adviser and raise any concerns they may have about the mediation process.

### Diagram 12.3 Timeframe for Contacting the Mediation Advisor and Provision of Information



12.31 When providing the information and advice the mediation adviser, should be able to answer any questions from the relevant party and explain clearly the principles of mediation including:

- a) that mediation is a voluntary, informal and non-legal process;

<sup>6</sup> Draft regulation 35(1) (Mediation certificates in connection with certain appeals).

<sup>7</sup> Draft regulation 35(2) (Mediation certificates in connection with certain appeals).

- b) information and advice on whether the nature of the decision(s) which the person intends to appeal can be subject to mediation;
- c) that the process is time bound, explaining the timescales that are required to be met and the purpose of the mediation certificate;
- d) the information and advice should be factual and unbiased;
- e) that the mediation adviser and mediator are independent of the EA; and
- f) the mediation adviser should not seek to pressure the relevant party into a decision to go for mediation.

12.32 Within **3 working days** from the information and advice being provided, the mediation adviser is required to issue a '**mediation certificate**' to the relevant party.<sup>8</sup> The relevant party is not required to inform the mediation adviser whether they wish to pursue mediation.<sup>9</sup> If, however, the relevant party has informed the mediation adviser that they wish, (or as the case may be, they do not wish), to pursue mediation with the EA, the mediation certificate is required to state that fact.<sup>10</sup> **The mediation certificate is an important document.** Should the relevant party still wish to appeal to the Tribunal, they are required to produce the mediation certificate, whether they go for mediation or not, to prove that they have made contact with the mediation adviser and that they have been told about the option of going for mediation.

### **Exceptions to the Requirement for a Mediation Certificate**

12.33 Under Article 21C of the 1996 Order, while the relevant party may contact a mediation adviser if they intend to appeal to the Tribunal, they **do not** require a mediation certificate if they decide to make an appeal about the following EA decisions:

- a) the school or other institution named in a Statement;

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<sup>8</sup> Draft regulation 35(3) (Mediation certificates in connection with certain appeals).

<sup>9</sup> Draft regulation 35(4) (Mediation certificates in connection with certain appeals).

<sup>10</sup> Article 21C(5) (Information and advice as to mediation in connection with certain appeals) of the Education (Northern Ireland) Order 1996.

- b) the type of school or other institution named in a Statement; or
- c) the fact that a Statement does not name a school or other institution.<sup>11</sup> (See Section 5).

12.34 While it is recognised that mediation is an important method to help resolve disputes and achieve agreement between parties, **mediation is not a mandatory process**. It is entirely a matter for the relevant party to decide if they wish to engage in mediation.<sup>12</sup>

**Key point: A relevant party is required to make contact with a mediation adviser before registering for certain appeals but does not have to engage in mediation.**

12.35 Where a relevant party intends to appeal to the Tribunal, and having considered the information and advice provided by a mediation adviser, wishes **to pursue mediation** with the EA, they are required to contact the mediation adviser **within 6 weeks** from the date of the Notice which communicated the EA's decision.<sup>13</sup> Where a relevant party has requested mediation, the EA is required to arrange for it and participate in the mediation.<sup>14</sup>

12.36 The date that the relevant party makes contact with the mediation adviser will be taken as the **date of contact**.<sup>15</sup> Once the relevant party has made contact, the mediation adviser is required to arrange a date and place for the mediation meeting to take place between the relevant party and the EA. The meeting is required to take place **within 4 weeks** from the date of contact with the relevant party.<sup>16</sup> The relevant party is required to be given at least 10 working days' notice of the date and place of mediation, unless the relevant party agrees to a shorter notification period.<sup>17</sup>

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<sup>11</sup> Draft regulation Schedule 1 Part 2 para 6(d) (Additional information to be included in Notices).

<sup>12</sup> Draft regulation 35(4) (Mediation certificates in connection with certain appeals).

<sup>13</sup> Draft regulation 36(1) (Mediation).

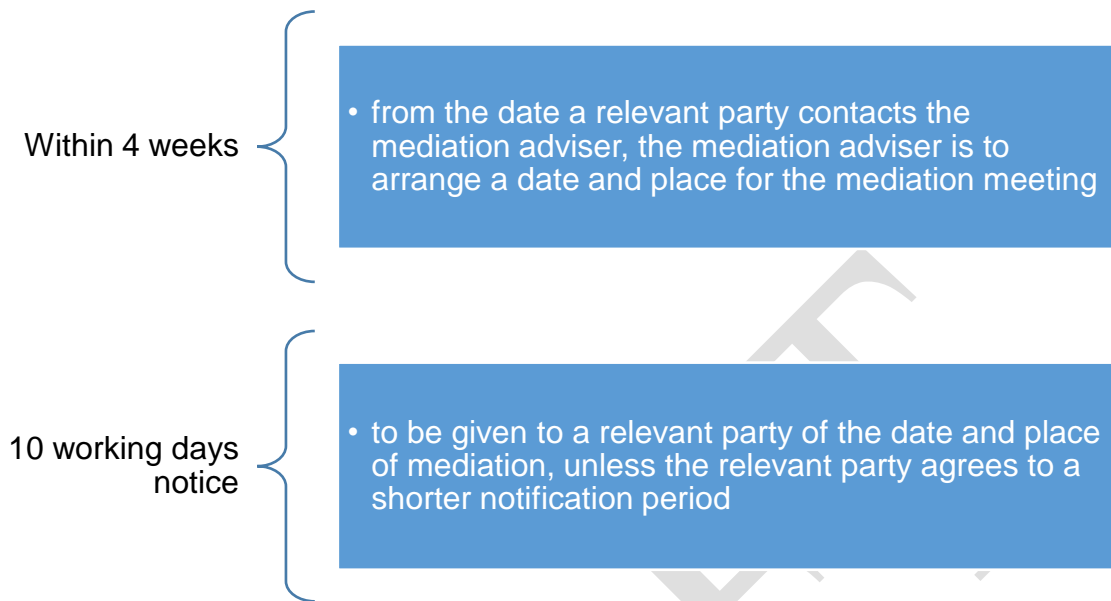
<sup>14</sup> Article 21B(3B) (Mediation in connection to appeal) of the Education (Northern Ireland) Order 1996.

<sup>15</sup> Draft regulation 36(2) (Mediation).

<sup>16</sup> Draft regulation 36(3) (Mediation).

<sup>17</sup> Draft regulation 36(4) (Mediation).

## Diagram: 12.4 Timeframe for Arranging a Mediation Meeting



### Where the Relevant Party Fails to Contact the Mediation Adviser

12.37 The mediation adviser **may not issue a mediation certificate** if the relevant party has not contacted the mediation adviser within 4 weeks of the EA's decision and informed the mediation adviser of their intention to appeal.<sup>18</sup>

12.38 The mediation adviser **may not arrange mediation with the EA** if the relevant party has not contacted the mediation adviser within 6 weeks of the EA's decision and informed the mediation adviser of their intention to pursue mediation.<sup>19</sup>

### Attendance at Mediation<sup>20</sup>

12.39 The following persons may attend the mediation:

- a) the parties to the mediation;

<sup>18</sup> Draft regulation 37(1) (Where a person fails to contact the mediation adviser).

<sup>19</sup> Draft regulation 37(2) (Where a person fails to contact the mediation adviser).

<sup>20</sup> Draft regulation 38(1) (Attendance at mediation).

- b) any advocate, other supporter, representative, alternative person that the relevant party wishes to attend the mediation;
- c) where the child's parent is a party to the mediation, the child (with the agreement of the parent and the mediator);
- d) in the case of a young person whose representative is a party to the mediation, the young person (with the agreement of the representative and the mediator); and
- e) any other person, with the consent of all of the parties to the mediation, or where there is no such agreement, with the consent of the mediator.<sup>21</sup>

12.40 In keeping with the duty, under Article 5A of the 1996 Order, for the EA to have regard to the views of the child, the mediator is required to take reasonable steps to seek, and have regard to, the views of the child about the mediation issues.<sup>22</sup>

### **Training and Experience of Mediators<sup>23</sup>**

12.41 Mediation is required to be conducted by independent mediators upon arrangement by the EA. The person fulfilling the independent mediator role shall:

- a) be a fully trained mediator in order to ensure that the mediation is conducted in an effective, impartial and competent way;
- b) demonstrate evidence of not less than 2 years continuous professional development as a mediator;
- c) demonstrate experience of mediating with children and families; and

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<sup>21</sup> Draft regulation 38(1) (Attendance at the mediation).

<sup>22</sup> Draft regulation 38(2) (Attendance at the mediation).

<sup>23</sup> Draft regulation 39 (Training and experience of mediators).

d) demonstrate sufficient knowledge of legislation in relation to Special Educational Needs in Northern Ireland to effectively conduct the mediation.<sup>24</sup>

**Key Point: Any mediator appointed by the EA is required to be an independent person not employed by the EA.**

### Mediation Agreement<sup>25</sup>

12.42 Where mediation has taken place and the parties to the mediation reach an agreement, the '**Mediation Agreement**' should be recorded in writing by the mediator within **3 working days** of the agreement being reached and shared with both parties.<sup>26</sup>

12.43 Where the issues in the mediation agreement are those which the relevant party has a right to appeal to the Tribunal, the EA is required to comply with the required timeframe, as if the Mediation Agreement were an Order of the Tribunal.<sup>27</sup> **Annex 13** sets out the prescribed timescales within which the EA is required to take the actions agreed for those decisions which carry a right of appeal (as drawn from Schedule 3 of the draft SEN Regulations, as stated 'as if the mediation agreement were an Order of the Tribunal').

12.44 Where the issues in the mediation agreement are those where the relevant party **does not have a right of appeal** to the Tribunal but requires the EA to take an action, the EA is required to take that action within **2 weeks** from the date of the **Mediation Agreement**.<sup>28</sup>

12.45 The time limits set out in paragraph 12.43 (and Annex 13) and in paragraph 12.44 do not apply where parties to the mediation agree in writing to a different

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<sup>24</sup> Draft regulation 39 (Training and experience of mediators).

<sup>25</sup> Draft regulation 40 (Mediation Agreement).

<sup>26</sup> Draft regulation 40 (1) and (2) (Mediation Agreement).

<sup>27</sup> Draft regulation 40(3) (Mediation Agreement).

<sup>28</sup> Draft regulation 40(4) (Mediation Agreement).

timescale.<sup>29</sup> Diagram 12.5 shows a timeline for the steps within the mediation process, from the date of the EA decision to a mediation agreement being reached.

### Appeals to the Tribunal

12.46 Even if mediation has taken place, it may not always lead to complete agreement between the parties concerned. If the relevant party still wants to appeal and the decision they are unhappy with carries a right of appeal to the Tribunal, they may still do so. However in order to proceed, for certain appeals – detailed in paragraph 12.25 - there is a requirement for the relevant party to provide the Tribunal with the mediation certificate, as evidence that they have made contact with the mediation adviser and that they know about the option of using mediation. (See paragraph 12.32). In all appeals, with the exception of those set out in paragraph 12.33 (regarding the naming of a school on a Statement) **the relevant party requires a mediation certificate to lodge an appeal with the Tribunal.**

**Key point: In circumstances where an EA decision carries a right of appeal and mediation is an option, the relevant party is required to have a mediation certificate before lodging an appeal with the Tribunal (with exception of those appeals mentioned in paragraph 12.33).**

### Tribunal Guidance

12.47 This Code does not include guidance on Tribunal procedures. Further information on the workings of the Tribunal can be found in the booklet Special Educational Needs and Disability Tribunal (SENDIST) – “How to appeal”<sup>30</sup> or on the Special Educational Needs and Disability Tribunal website at <https://www.justice-ni.gov.uk>.

### Compliance with Tribunal Orders - prescribed period<sup>30</sup>

<sup>29</sup> Draft regulation 40(5) (Mediation Agreement).

<sup>30</sup> Draft regulation 41 (Compliance with Tribunal orders – prescribed period).



12.48 If following an appeal, the Tribunal makes an Order in favour of the relevant party, the EA **is required to comply** with that Order before the end of the prescribed period. **Annex 13** sets out the prescribed timescales within which the EA is required to take the actions agreed for those decisions which carry a right of appeal (as drawn from Schedule 3 to the draft SEN Regulations).

12.49 If the Tribunal determines in favour of the relevant party in relation to carrying out a statutory assessment or the making, maintaining or amending of a Statement, the EA is required to comply with that Order beginning with **the date on which it is made** unless certain exceptions apply.<sup>31</sup> These exceptions will depend on the Order being made by the Tribunal. (See **Annex 9** which provides an overall summary of the Statutory Assessment and Statementing Process – Statutory Timelimits, Upper Time limits and Exceptions).

#### **Unopposed Appeals – prescribed period<sup>32</sup>**

12.50 If an appeal is lodged with the Tribunal and the EA decides not to oppose or concedes the appeal, then the appeal is treated as having been determined in favour of the relevant party as under Article 18A of the 1996 Order. The EA is required to ensure that they have suitable arrangements in place to comply with the appellant's wishes within the prescribed time periods (see Annex 13),<sup>33</sup> unless there is a valid exception which make it impracticable for the EA to meet the timeframe. (See paragraph 12.49). In these cases, the prescribed time period is required to begin on **the date the EA notifies the Tribunal** that they have determined to concede or not oppose the appeal.<sup>34</sup>

12.51 This applies only to the following types of appeal to the Tribunal:

- the EA's decision not to make a Statement (as under an Article 17(1) Notice);

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<sup>31</sup> Draft regulation 41(2) (Compliance with Tribunal Orders – prescribed period).

<sup>32</sup> Draft regulation 42 (Unopposed appeals - prescribed period).

<sup>33</sup> Draft regulation 42(2) (Unopposed appeals – prescribed period).

<sup>34</sup> Draft regulation 42(3) (Unopposed appeals – prescribed period).

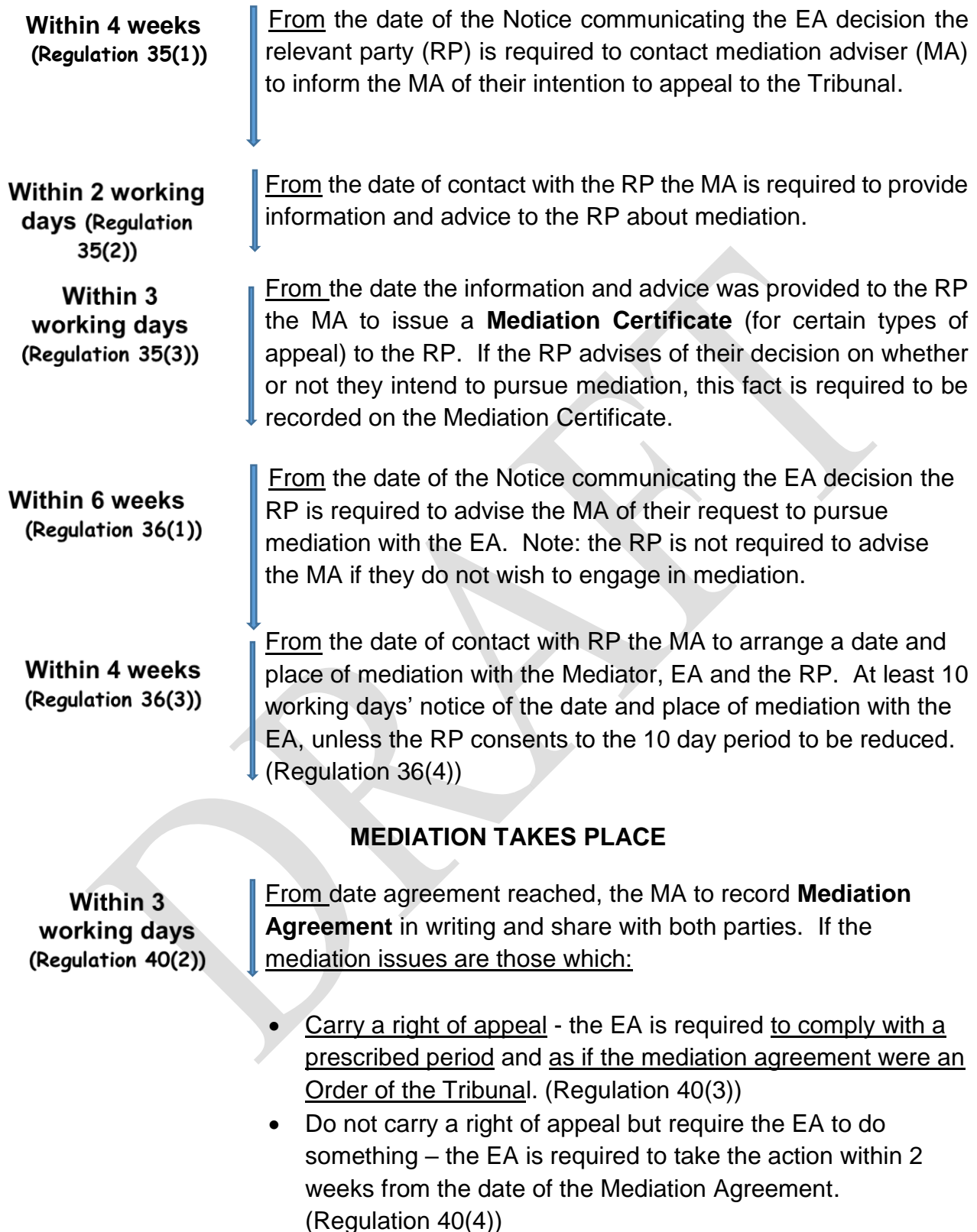
- the EA's decision not to make an assessment (as under an Article 20 Notice or Article 20A Notice or 21ZA Notice, as appropriate); or
- the EA's decision not to substitute a school named in a Statement for a different school named (as under a Paragraph 11(3) of Schedule 2 to the 1996 Order Notice).

12.52 The following types of appeal have been excluded and are required to go to hearing before the Tribunal:

- appeals against the content of a Statement; or
- appeals against a decision to cease to maintain a Statement.

12.53 This is because in these types of appeal, the Statement could be amended in a number of different ways and deciding the appeal without a hearing may not be suitable. Where the EA has not contested the appeal in these circumstances, the appeal will go to a hearing at which the parent will be present. The EA may attend if they so wish.

## Diagram 12.5: Mediation Timeline and Associated Steps



Mediation unsuccessful in addressing the mediation issues – the RP may decide to lodge an Appeal, if they have not already done so.