

# Prime Resolution: SEND Mediation Provider in Birmingham

## The Role of Mediation in EHCP Appeals

### Presentation for Birmingham SENCOs

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# About Us

- Prime Resolution began in 2014
- Social Enterprise = “service before profit”
- We do about 1000 SEND mediations a year between 50 of us
- Based in West Mids – cover 11 LAs in the area
- **Independent and impartial**
- i.e. not working for the LA, schools or parents (our webinars are delivered free of charge).



# Aim of the Presentation

To help schools get the most out of mediation – how to use it in the best interests of children and young people with SEND

- **For SENCOs** involved in EHCP appeals
- **To build confidence** in the role of mediation in EHCP appeals
- **To set the record straight** in the face of questionable advice surrounding the EHC Needs Assessment...



# How does mediation fit in?

- [SEND Code of Practice 2015 and SEND Regulations 2014](#)
- Chapter 11
- 11.13 – Mediation
- *If parents or young people want it to, mediation can take place following decisions by a local authority not to carry out an EHC needs assessment, not to draw up an EHC plan, after they receive a final EHC plan or amended plan, following a decision not to amend an EHC plan or a decision to cease to maintain an EHC plan.*
- **Therefore mediation can happen at 4 stages:**
  - 1. Refusal to Assess*
  - 2. Refusal to Issue*
  - 3. Content of Plan (new or existing EHCP)*
  - 4. Cease of Plan*



# What is mediation?

- A professionally conducted meeting designed resolve disagreement
- Involves LA, parent/ YP, mediator and educational institution, plus others if appropriate e.g. social care, health representatives, SENDIASS etc
- Most are now online, but in person may be possible
- Typically up to two hours, but varies

## Usual format:

1. intro 2. parent 3. school 4. others 5. LA 6. open discussion

- Agreement written up and sent out with certificate



# The Benefits of Mediation

1. High success rates
2. Much cheaper and faster than tribunal - LA has to attend a mediation within 30 days of request (tribunals can be over a year)
3. Very little extra admin for parents and schools\*
4. Legally binding for the LA –same status as a tribunal order
5. Undivided attention of senior LA Officer
6. Authority to overturn decision
7. Clarification of situation
8. Extension of appeal rights
9. Worst case scenario?

\* Beyond what should exist already as part of the GA...



# The ethos of mediation

1. **Aim of mediation:** to come to an agreement in best interests of child/ young person (within the remit that the LA can operate).
2. Not adversarial
3. Voluntary (for the parent, not the LA)
4. Confidential and without prejudice
5. Puts child/ young person at centre
6. Opportunity to gather information/ hear different points of view etc.
7. Mediator's role = "impartial facilitator"
8. Don't worry if you don't know what to say or think you might forget something important – it is the mediator's job to draw the relevant information out of you
9. Preparation



# What does the law say about assessments?

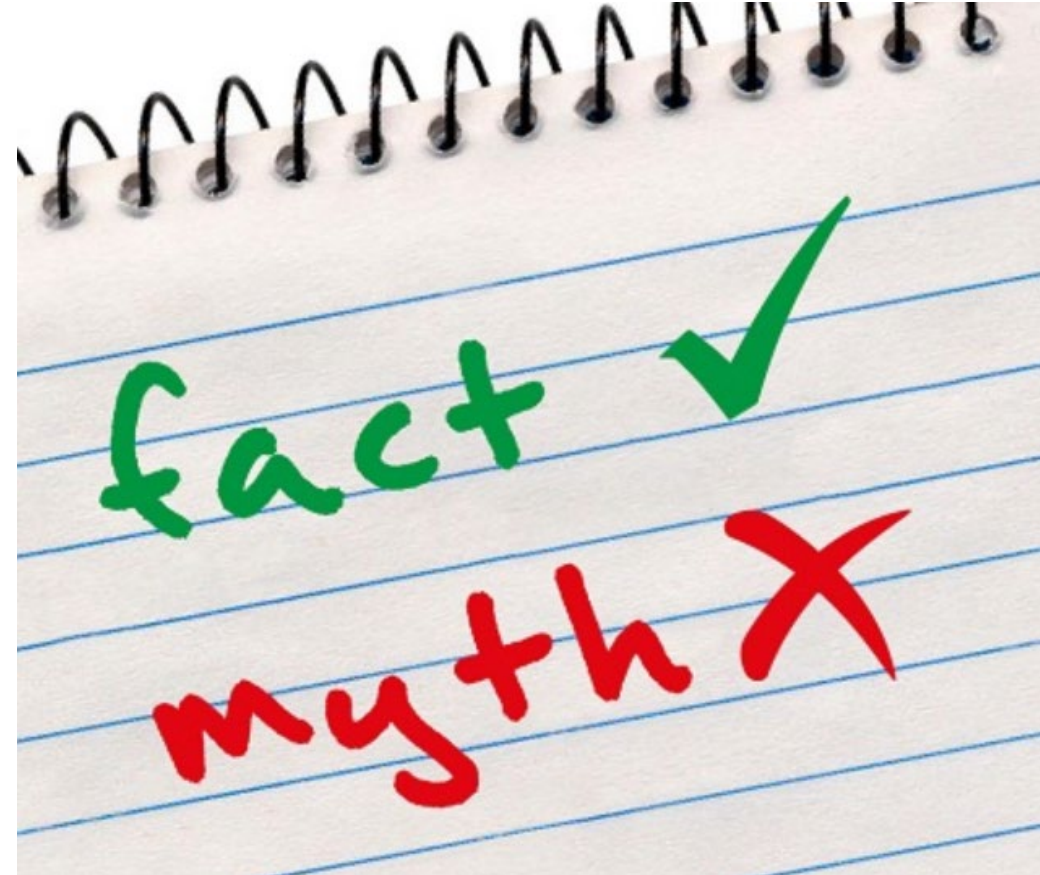
- [Children and Families Act 2014](#)
- *The local authority must secure an EHC needs assessment for the child or young person **if**, after having regard to any views expressed and **evidence submitted**, the authority is of the **opinion** that—*
- *(a) the child or young person has or may have special educational needs, and*
- *(b) it may be necessary for special educational provision to be made for the child or young person **in accordance with an EHC plan**.*
- **Note ambiguity and alternative interpretations!**





# What if schools don't provide evidence?

- Beware questionable/ extreme interpretations of the law –
- E.g. "school doesn't have to provide evidence"...
- Q. Where does that lead?
- A1. LA refuses = longwinded appeal
- A2. LA agrees (!) = bounces back at RTI = even longer appeal
- False economy – information will have to be provided at some stage, so may as well have it in place from the beginning.
- Most importantly, it's NOT in child's best interests
- Following this advice has led to some unfortunate situations...



# Making it work for children & YP in Birmingham

- A **child-centred approach** saves everyone time
- **Robust GA** delivers better outcomes for children
- **Collaboration**
- Hopefully it won't go to appeal, but if it does come to mediation, please work with us to fill in the gaps
- LA has responsibilities within the legal framework:
- "In order to make the **right decision**, LA must have the **right information**"





# prime resolution

- Thank you very much for listening – any questions?
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