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Dear Aoibhinn

Thank you for your email of 18 May 2026 seeking further information on the Department of Education's response to previous correspondence issued to the Committee for Justice in relation to the SL1 – The Special Educational Needs and Disability Tribunal (Amendment) Regulations (Northern Ireland) 2026.

The Department has set out its response to the concerns raised at point 10, in relation to the provision of mediation and the capacity of the child, in the attached document. Each point has been addressed individually, as requested, to support the Committee in providing a comprehensive response to the Committee for Justice.

I hope this is helpful. Please do not hesitate to get in touch should you require any further information.

Yours sincerely



Acting Departmental Assembly Liaison Officer



Mediation

1. The importance of making applicants aware that the mediation is between them and the EA and not the school

Mediation is in relation in certain cases where the Education Authority (EA) issues a decision that carries a right of appeal to the Special Educational Needs and Disability Tribunal (SENDIST). The EA decisions include:

- Not to make a statement
- Not to amend a statement
- Content of a statement
- Not to carry out a statutory assessment
- Ceasing a statement

The Special Educational Needs (SEN) Regulations (Northern Ireland) 2026 (SEN Regulations 2026 hereafter) define the parties to the mediation as

- (a) the person with a right of appeal to the Tribunal who opts to pursue mediation (on the one part); and
- (b) the Authority (on the other part).

Any advice and guidance that is produced will make it clear mediation is between the parent, or child over compulsory school age.

2. The unfairness inherent in a system that makes the provision for delivery of a Notice of Appeal in SENDIST cases within a two-month time limit contingent upon the issue of a mediation certificate.

The requirement to have a mediation certificate in order to lodge certain appeals is specified in Section 10(3) of Special Educational Needs and Disability Act (Northern Ireland) 2016 (SEND Act 2016 hereafter), which was passed by the Northern Ireland Assembly in 2016.

3. What happens in cases where the mediation provisions are not applicable and can therefore not have a time limit that is contingent upon issue of a mediation certificate or the ending of a mediation process.

The following response is based on the interpretation of the question to be about a person wishing to attend mediation, even though they don't have to, in order to resolve an issue rather than lodging an appeal.

There are some EA decisions that do not require a mediation certificate and therefore the applicant can lodge an appeal within the statutory 2-month period from the date of the EA notice.

For those who wish to attend mediation and a certificate is not required to lodge an appeal, the timeframe will be in line with those who require a certificate and attend mediation; the 2-month timeframe begins on the date of which mediation ended.

4. Proposals that the Regulations be amended in such a way that a mediation process is enabled to run alongside the SENDIST process without delaying or obstructing access to appeal rights, whilst also allowing for mediation to occur at the earliest possible juncture for those who wish to avail of it.

A staggered start to the two-month period enables an applicant to focus on mediation without the added pressure of preparing for and potentially lodging an appeal that may ultimately be unnecessary. This does not obstruct access to appeal rights.

5. Clarify how the mediation process is to be funded, who this mediator is, what criteria the role needs to meet, what the parameters are around the mediator, and the workload implications for all involved in the tribunal process.

The Education Authority has awarded a contract to Global Mediation for the delivery of a Dispute Avoidance and Resolution Service and a Mediation Service. The SEN Regulations 2026 detail the mediation process, including timescales. There should be no workload implications for those involved in the tribunal process, apart from perhaps sign-posting the need for a mediation certificate and where to obtain one.

6. Addressing the need for qualified independent mediators.

Section 10(7) of the SEND Act 2016, which was passed by the Northern Ireland Assembly in 2016, requires the Department of Education to include information in their Regulations about *'training, qualifications and experience of mediation advisers and mediators.'* This is stipulated in Regulation 38 of the SEN Regulations 2026.

Capacity of the child

1. Whether the EA can make such a determination unilaterally that a child over compulsory school age lacks capacity.

Any assessment of capacity must be undertaken in line with relevant legal frameworks and should be based on appropriate professional evidence, with safeguards to protect the rights of the young person.

2. Which professionals will be carrying out capacity assessments relating to education settings; what the capacity assessment process will be; who will carry it out and when and how will the child's human rights, including the right to a fair trial be protected if the Tribunal or another relevant party raises a question about the child's capacity.

Any assessment of capacity must be undertaken in line with relevant legal frameworks and should be based on appropriate professional evidence, with safeguards to protect the rights of the young person.

It is considered that capacity assessments should:

- be undertaken by suitably qualified professionals with relevant expertise (for example, health or psychological professionals), rather than determined solely through administrative processes;
- be evidence-based and proportionate, taking account of the individual circumstances of the young person;
- include clear documentation of the assessment process and outcome.

3. What challenge mechanism or safeguards (other than judicial review) will be put in place to enable a young person to challenge a determination that they lack capacity.

In relation to safeguards:

- the rights of the young person, including the right to a fair hearing, must be central to any assessment process;
- where a question of capacity arises, this should be subject to appropriate scrutiny;
- processes must ensure that the young person's views are sought and considered to the greatest extent possible.

The importance of ensuring that any determination regarding lack of capacity is subject to appropriate safeguards is acknowledged.

In addition to judicial review, it is considered that:

- there should be a clear and accessible mechanism for challenging such determinations;
- procedural safeguards should ensure transparency, including access to the evidence underpinning any capacity assessment;
- provision should be made for reconsideration where circumstances change or new evidence becomes available.

4. Confirmation that when it is deemed that an individual above compulsory school age is determined not to have the capacity to proceed with SENDIST proceedings, that a designated responsible adult deputises for him/her during any tribunal.

It is agreed that, where a young person is determined not to have capacity to engage in SENDIST proceedings:

- a suitably identified and legally recognised representative (for example, a parent or other designated responsible adult) should act in their interests;
- the role of that representative should be clearly defined within the Regulations; and
- arrangements should ensure that the young person's best interests and, where possible, their views continue to be reflected in proceedings.