

ACADEMIES

AN INTRODUCTION TO THE ACADEMIES SEN DISPUTE RESOLUTION SERVICE



SEN Admissions and Academies - Background

Ministers have always made it clear that Academies are fully inclusive schools and therefore must admit pupils with SEN on an equal basis with others and that this should be reflected in their admissions policy.

To this effect, when a local education authority (LEA) proposes to name the Academy in a Statement of SEN made in accordance with section 324 of the Education Act 1996, the Academy ***“shall consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children and where no reasonable steps may be made to secure compatibility”*** (Annex 3 of the Academy funding agreement).

If an Academy does not consent to be named on a Statement of SEN on these grounds, and the LEA disagrees, the LEA should not go ahead and name the Academy regardless. If no agreement is reached between the Academy and the LEA, the Academy may refer the case to the Secretary of State to make a Determination.

The procedures that Academies and LEAs should be following when considering SEN admissions to Academies are detailed as a flow chart at ***Annex 1***.

Annex 3 of the (model) funding agreement (attached as ***Annex 2*** to this document) outlines Academy SEN policy, and refers to the guidance that Academies need to have regard to or follow. Notably it details that, although Academies are independent schools, they shall have regard to the Special Educational Needs (SEN) Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996.

Why introduce an Academies SEN Dispute Resolution Service?

Over the last two years the majority of Academies and LEAs have successfully reached agreement locally with regards Academy SEN admissions. However there have been some instances where an Academy and a LEA were unable to reach agreement over the admission of pupils with a Statement of SEN to the satisfaction of the Academy, the LEA and (most importantly) the child and parents. This situation arose due to many factors, mainly:

- A lack of comprehensive information provided to Academies and LEAs to date about procedures that need to be followed when proposing to name an Academy in a child’s statement of SEN;
- Some Academies and LEAs had not yet been able to set up effective consultation and communication mechanisms to fully discuss outstanding SEN admissions cases;
- The complexity for Academies of trying to reconcile the needs and desires of LEAs and parents with the ability of the Academy to meet

those needs;

- The difficulty for LEAs who are under pressure from some parents to name an Academy in their child's statement of SEN as they are impressed by the brand new Academy facilities and unwilling to look at other maintained school provision in the borough;
- Not referring the case to the Secretary of State for a Determination quickly enough for a satisfactory outcome where an impasse had been reached between an Academy and a LEA.

In order to tackle the above issues and facilitate timely and satisfactory decisions about the naming of an Academy in a child's statement to be made at a local level the Department for Education and Skills (DfES) decided to develop and implement a new, free and entirely voluntary SEN dispute resolution service for Academies.

Academies SEN Dispute Resolution Service – Summary

The service will provide support to Academy Principals and will be accessible at three levels. Although the service can only be called on by an Academy Principal it is expected to deliver benefits to all key stakeholders: Academies, LEAs, parents and most importantly, pupils. **Annex 3** gives a diagrammatic overview of the service and each stage is summarised below:

Stage 1 – Initial Consultation.

When an LEA consults an Academy about naming the Academy in a Statement of SEN, sometimes a disagreement develops. At that stage, the Academy Principal will have access to a support service in the form of an expert consultant who will provide independent advice and help Principals make an informed decision. The final decision will always be the Academy's. The position of the consultant is quite simply to offer a range of advice to support the decision-making process at Academy level. Any reasons that an Academy gives for not agreeing to be named in a Statement of SEN need to address Annex 3 of the Academy funding agreement.

Stage One consultants can also facilitate discussions between the Academy and the LEA to help resolve any disagreements by exploring all options (eg what reasonable steps might be taken in order to meet the child's needs in a way that is compatible with the efficient education of other children at the Academy).

Cambridge Education (CE) has been appointed to provide stage one of the service. CE were chosen due to the quality of their SEN consultants and extensive experience in working with both LEAs and schools.

Stage 2 – Dispute Mediation Service.

Following Project Stage One, if no agreement has been reached between the Academy and the LEA, a dispute mediation service can be activated by the Academy Principal. In order for agreement to be reached at Stage Two, the LEA would have to agree to take an active role in the mediation although they are under no obligation to do so. Stage two emulates the current LEA informal dispute resolution service. Such an approach should allow for all options to be explored (eg what reasonable steps might be taken in order to meet the child's needs in a way that is compatible with the efficient education of other children at the Academy) and help build better long-term relationships by encouraging all parties to work together to reach a resolution. This service will be entirely voluntary and confidential and will not prejudice the rights of the Academy, the LEA or the parent to take the matter further if necessary.

CEDR Resolve has been appointed to provide the mediation part of the service. CEDR were chosen because of the quality and depth of highly experienced mediators they could offer from a variety of professional backgrounds (eg lawyers, public sector, QCs etc).

Stage 3 – Secretary of State Determination.

If after mediation (Stage 2) there is still no agreement, it would normally be appropriate for the Principal to ask the Secretary of State to make a Determination so that the case can be resolved quickly.

A team from KPMG has been appointed to provide independent advice to the Secretary of State on SEN admissions cases referred for Determination. KPMG were chosen because of their whole team approach to delivering the service to tight timelines as well as the extensive SEN knowledge and expertise.

Full information on each of the three stages of the service and how to access them are enclosed with this pack.

Annex 1

Title: Annex 3 of the (model) funding agreement

1. The Academy shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996.

Duties in relation to pupils with SEN

2. The governors of the Academy shall designate a person, who may be the head teacher, the chair of governors or another governor as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The governors of the Academy shall:

- use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil's learning difficulty calls for is made;
- secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;
- secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and
- consult the local education authority and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

4. Where a child who has special educational needs is being educated in the Academy, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with:

- the child receiving the special educational provision which his learning difficulty calls for,
- the provision of efficient education for the children with whom he will be educated,
- the efficient use of resources and
- that the child engages in the activities of the school together with children who do not have SEN.

5. The Academy prospectus shall include details of the governing body's policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include details of the arrangements for the admission of disabled

pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Disability Discrimination Act 1995).

Admissions

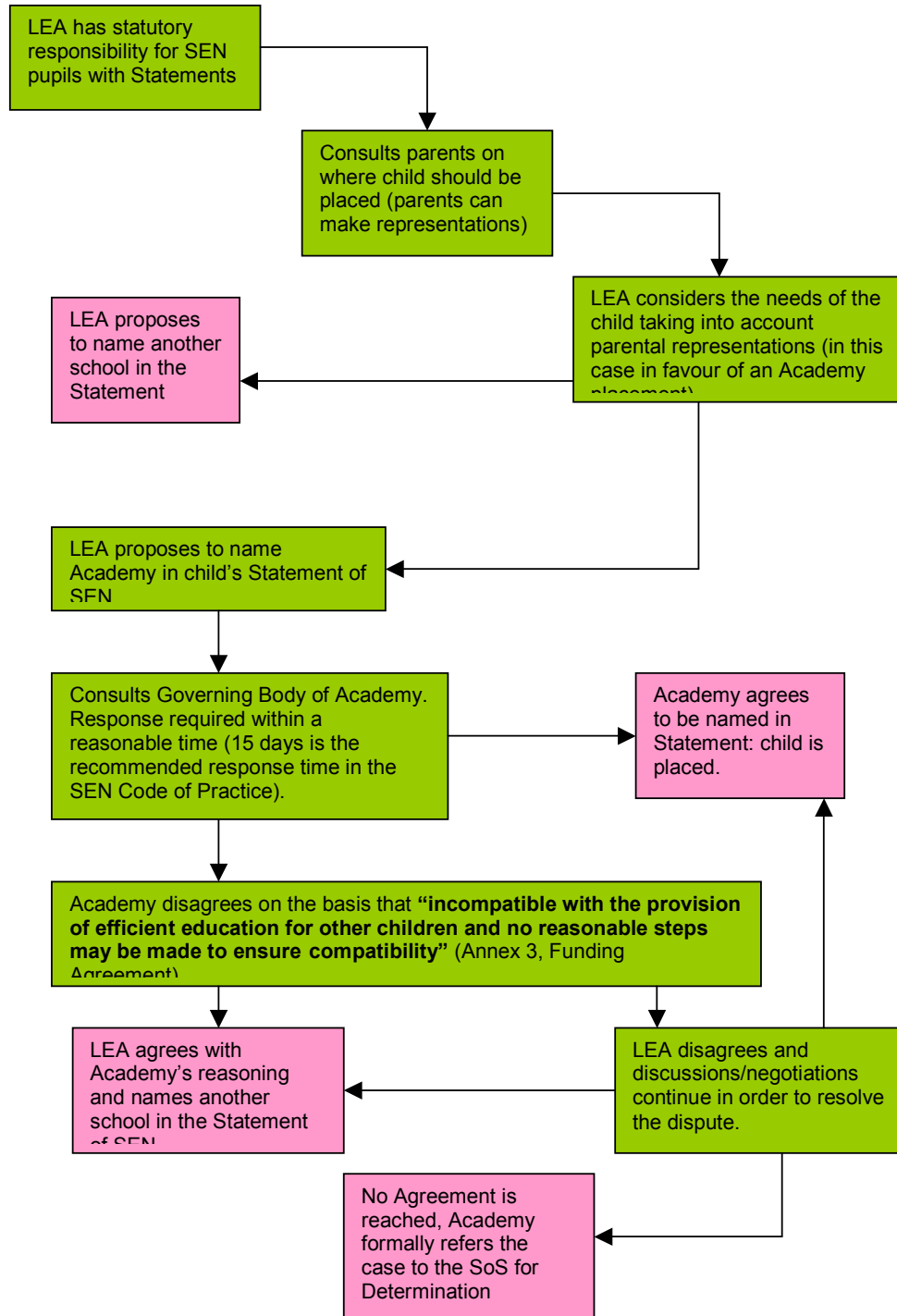
6. The Academy shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

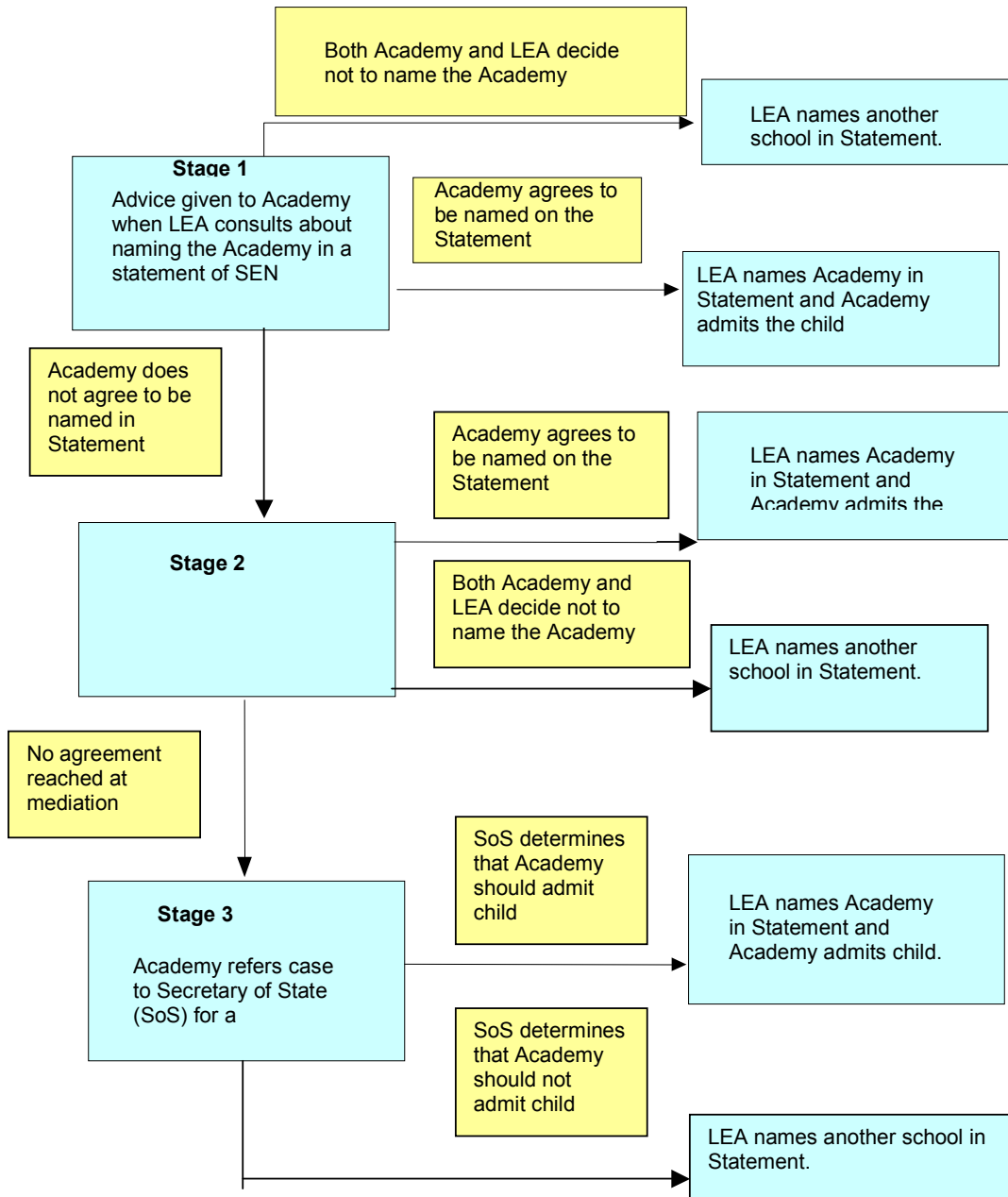
7. Where a local education authority proposes to name the Academy in a statement SEN made in accordance with section 324 of the Education Act 1996, the Academy shall consent to being named, ***except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility.*** In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Academy shall have regard to the relevant guidance issued by the Secretary of State to maintained schools. In the event of any disagreement between the Academy and the local education authority over the proposed naming of the Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. The Secretary of State's determination shall be final.

Where the Academy has consented to be named in a child's statement of SEN, or the Secretary of State has determined that it should be named, the Academy shall admit the child.

Annex 2

Title: SEN pupils with Statements – process around Admissions to Academies







ACADEMY SEN DISPUTES RESOLUTION

During the last two years, there have been instances where an Academy and an LEA have failed to reach an agreement over the naming of an Academy in a Statement of Special Educational Needs to the satisfaction of the LEA, the Academy and, most importantly, the child and parents. In some cases this resulted in an Academy being named in a pupil's statement (of SEN) prior to adequate consultation taking place.

For this reason it was decided that an effective system should be put in place to ensure that disputes over SEN admissions between LEAs and Academies are resolved – and are clearly seen to be resolved – in an open, fair and objective way. To this effect, the Academies Division at DfES has decided to introduce a new, three-stage service to:

- ▶ Ensure Academies are inclusive but treated fairly by their LEAs.
- ▶ Ensure all pupils with SEN Statements are correctly placed at school, in time for the academic year.
- ▶ Ensure as few cases as possible are referred for determination by the Secretary of State - as the new service will effectively deal with disputes at a 'local' level.

In the first instance, the service will provide Academy Principals with independent advice (Stage 1).

Next, a robust mediation service will be made available to assist with particularly difficult cases (Stage 2).

Following from Stage 2, if cases remain unresolved, the Secretary of State will be asked to make a determination (Stage 3).

Cambridge Education Ltd [CE] has been recruited to deliver the Stage 1 service to Academies. It is expected that the demand will be met with, on average, one or two days of consultancy, per academy, per year.

CAMBRIDGE EDUCATION

Cambridge Education (CE) is the unified name of Cambridge Education Consultants and Cambridge Education Associates – two companies who have been involved in the provision of high quality education services, both in the UK, for over 15 years.

In addition, we provide school improvement expertise to over 45 countries worldwide. We currently employ 550 full-time staff and have a database of 7,000 associate education specialists.

The support of our parent company, Mott MacDonald, allows us to draw on the resources of the Group and its 60 offices worldwide, and on a 100-year track record of project management in over 100 countries.

The DfES have identified three key aims and objectives for the service:

- ▶ Implement an effective dispute resolution process that would ensure all pupils with SEN statements are given school placements in a timely manner
- ▶ Ensure that as few cases as possible are referred for determination by the Secretary of State, and
- ▶ Encourage and support positive relationships between Academies and their LEAs with a result that LEAs do not name Academies in SEN Statements without Academy consent.

CAMBRIDGE EDUCATION ROLE

The role of CE is to:

- ▶ Offer a range of advice and support to the decision-making process at the Academy
- ▶ Facilitate a process where all options are explored and long term relationships between the Academy and LEA are encouraged in order to facilitate effective working arrangements
- ▶ Act as a "Critical friend" in support of negotiations between the Academy and LEA
- ▶ Promote the principles of inclusion.

The CE approach to the delivery of the service required is one that opens the debate with all parties involved in the initial consultation, sets out the principles and considers issues before advising, essentially adopting the stance of "Honest broker".

The scope of activities we are able to deliver during Stage One are:

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| ▶ Review of the background to the case | ▶ Review of the evidence from the Educational Psychologist |
| ▶ Review of the details of proposed statement | ▶ Provision of advice to the Academy on its response to the Local Education Authority |
| ▶ Review of the LEA provision for pupils with SEN | ▶ Act as "Critical Friend" to the Academy Principal during negotiations with the LEA |
| ▶ Analysis of stakeholder requirements | ▶ Act as "Honest Broker" to the Academy Principal to facilitate the decision-making process |
| ▶ Review of the options in the locality | ▶ Attend meetings between the Academy and LEA as required and act as "Honest Broker" at meetings |
| ▶ Advice to the Academy Principal on responsibilities | ▶ Advice to the Academy on its response to the LEA |
| ▶ Advice to the Academy Principal on current legislation | ▶ Provide appropriate documentation to facilitate the Stage 2 process. |
| ▶ Advice to the Academy Principal on SEN procedures | |
| ▶ Review of the Academy's admission policy | |

INITIATE THE SERVICE

To initiate the service Academies should initially contact the Cambridge Education Helpline Tel: 01223 578500 Fax: 01223 578501. The Helpline will make contact with the Programme Manager who will respond within 24 hours.

The Programme Manager will consult with the Academy on service requirements and identify an outline scope of service and the most appropriate specialist CE consultant to work with the Academy.



Contact: Philip Wells Cambridge Education Programme Manager:
Tel: 01223 578500
Fax: 01223 578501
Email: Philip.Wells@camb-ed.com



**A mediation service for the resolution of disputes between
Academy Principals and Local Education Authorities
regarding naming in Statements of
Special Educational Needs**

**Academy SEN admissions
dispute resolution project
Stage 2**

Resolving disputes by mediation



Resolving disputes by mediation:

Academy SEN admissions

The dispute resolution project

The Department for Education & Skills has launched a three-stage dispute resolution project to assist in those situations where an Academy and a Local Education Authority have failed to reach agreement over the naming of the Academy in a Statement of Special Educational Needs.

This mediation service represents the second stage of the new process:

- In stage one, Academy Principals are offered independent advice from an expert consultancy, Cambridge Education. The role of the consultants is to offer a range of advice and to support the decision-making process at the Academy. A separate leaflet is available to describe how this service works.
- Stage two, this mediation service, is available for those more difficult cases where the introduction of a third party neutral may assist in bringing negotiations to a satisfactory conclusion.
- If cases remain unresolved, Stage three of the process will involve a final and binding Determination by the Secretary of State.

What is mediation?

Mediation is a flexible process, conducted confidentially, in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute, with the parties in ultimate control of the decision to settle and the terms of resolution.

Mediation brings together the key stakeholder groups, mainly the Academy and the LEA, with an independent party who will facilitate and manage their discussions to try to ensure that an agreement is reached. Such an approach allows for options to be explored, and for all parties to develop more effective relationships and to work together to reach resolution of disputes at local level.

Mediation is:

- voluntary
- private and confidential
- conducted by a fully trained mediator

and leads to rapid and binding solutions (about 75 per cent of mediations settle in one day).

How much will a mediation cost?

There will be no charge to either Academies or LEAs as the cost of this mediation service will be borne by the DfES.



What happens in mediation?

- Relevant information is shared by each party and the mediator before the mediation.
- The parties meet in confidential discussions with the mediator and with each other.
- If successful, a written agreement is drawn up immediately and its implementation planned.
- The mediator facilitates the process, but the parties are responsible for the outcome.

Where do mediations take place?

Generally two or three rooms are needed so that the mediator can speak privately with each of the parties as necessary during the course of the mediation. Hopefully either the Academy or LEA involved in any particular dispute will be able to provide the necessary facilities, as this will avoid the cost of having to hire an alternative venue.

Who attends the mediation?

It is essential that both the Academy and the LEA are represented by individuals who have the authority to make agreements on the issues at hand without having to refer back to colleagues.

All parties are encouraged to bring a colleague or supporter to the mediation session. Where a consultant from the stage 1 process has been working with an Academy it may be appropriate for them to attend the mediation. Formal legal representation of any party is, however, unlikely to be necessary.

Who are the mediators?

The mediation service is provided by CEDR Solve under a contract awarded by the DfES in January 2005.

CEDR Solve is the dispute resolution arm of the Centre for Effective Dispute Resolution (CEDR) which is an independent non-profit organisation with a mission to encourage and develop mediation and other cost-effective dispute resolution and prevention techniques in commercial and public sector disputes. CEDR is a registered charity and is supported by multinational business and leading professional bodies and public sector organisations.

Our mediators are drawn from a wide range of backgrounds, including education, the public sector, legal profession and business. All the mediators are CEDR Accredited and CEDR Solve will carefully allocate mediators according to their suitability for each individual case.



What about quality control?

CEDR Solve's commitment to excellence ensures a continual monitoring of quality. Any concern regarding the mediator, or any other aspect of the process, can be raised before, during or after the mediation has taken place. CEDR Solve seeks feedback from the parties after mediations and continually monitors the mediators, all of whom carry professional indemnity insurance and are bound by a code of conduct.

Accessing the service

Only an Academy Principal can initiate the mediation service. Referrals can be made by telephone, e-mail or letter.

Once we have received a referral, one of our trained Dispute Resolution Advisers will make contact with each of the parties to check that everyone is prepared to participate in mediation, and to discuss practical details such as timing and venue. The Adviser will then work with the parties to identify a suitable mediator, and will also prepare a formal mediation agreement that everyone will be asked to sign to confirm their agreement to the confidentiality of the mediation process

How to contact us

Anyone involved in a dispute regarding Academy SEN admissions is welcome to contact one of our helpline to obtain more details about how the service works.

Our contact details are:

CEDR Solve
International Dispute Resolution Centre
70 Fleet Street
London EC4Y 1EU

Tel: 020 7536 6060

Fax: 020 7536 6061

Email: info@cedr-solve.com

Web: www.cedr-solve.com/academies

Secretary of State Determinations



ACADEMIES

Background

If no agreement is reached during Stages 1 and 2, an Academy Principal should formally request a Determination from the Secretary of State. By putting in place Stages 1 and 2, we expect to significantly reduce the probability of this happening. However, the reality is that there are still going to be individual cases where the Secretary of State will have to look at the evidence provided by both the LEA and the Academy in support of their respective positions and make a final decision. This leaflet outlines the procedure a Principal should follow if it becomes necessary to ask for a Secretary of State Determination.

For Stages One and Two we have arranged with the contractors that Academies can have access to the service by simply picking up the telephone. Whilst we also want to keep the paperwork down to a minimum for Stage Three, Academies will appreciate that there will be a need to make sure that evidence is collated as comprehensively and fairly as possible.

The Education Advisory Service of KPMG has been recruited to provide informed advice to the Secretary of State. They have a team of senior advisers with wide SEN experience to make sure that the Secretary of State has access to advice that is comprehensive, balanced and completely objective following a careful review of all the facts.

Making a Determination

Timing

It is hoped that any determinations will be referred to the Secretary of State only after all other options have been explored (including accessing support at Stages One and Two) but **well in time for appropriate alternative arrangements to be made for the child should the decision be not to admit to the Academy.**

Process – presenting an evidence based case

It is the Academy Principal who has the authority to trigger the process, by completing the form in this pack (although we recommend that Principals also contact their Project Lead to alert them to the situation). When sending the form back to the Department, **Principals should include an evidence based case** supporting the Academy's position and other key documents that are clearly relevant to the case

being made. Such information should make it clear why, in the opinion of the Academy, **“admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility”** (Annex 3, Academy funding agreement). Within the case being made by the Academy, the Department would expect to see a consideration of efficient use of resources (including staffing expertise); any health and safety issues; any possible solutions and why they had been rejected – all backed up by evidence or explanation.

The Department will take responsibility for contacting the LEA who will be invited to forward evidence to support their position.

Outcome

On receipt of the initial request from the Academy, the Department would normally expect to have a Determination completed, and the outcome **communicated by letter** to both the Academy and the LEA, **within 15 working days** although this could be quicker should that be critical.



ACADEMIES

Request for a Secretary of State Determination

Date	
Name of Academy	
Name of Child	
<p>LEA contact</p> <p>(Name of relevant person in the LEA dealing with the case including contact details such as telephone number and email address)</p>	<p>Name _____</p> <p>Tel _____</p> <p>Email _____</p>
<p>Evidence based case</p> <p>Please tick box to confirm that an evidence based case is enclosed.</p> <p>(Required to be submitted in support of the Academy's position.)</p>	<p style="text-align: center;"><input type="checkbox"/></p>
<p>Supporting Documents</p> <p>It may be appropriate to enclose key supporting documents that are clearly relevant to the case being made.</p> <p>Please list any such documents in the space provided.</p> <p>(eg Child's Statement of SEN)</p>	

<p>Other Information</p> <p>Please note in the space provided any other information that the Secretary of State should be aware of which is not included elsewhere.</p> <p>(e.g. any important timing issues)</p>	
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<p>Principal</p> <p>(name printed and signature)</p>	<hr/> <hr/>
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Please complete and return along with written evidence based case and all relevant supporting documents and return to:

Patrick Collins,
Area 4N,
Sanctuary Buildings,
Great Smith Street,
Westminster,
London

Email - Patrick.collins@dfes.gsi.gov.uk

Tel -02079256809

Your request for a Determination will be acknowledged on receipt.

All documentation provided will be treated in the strictest of confidence.

For office use only:			
Reference number	_____	Outcome	<i>Name/Do not name</i>
Date received	_____	Case closure date	_____

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