Independent Mediation, Disagreement Resolution and Tribunals

All councils must ensure that parents and young people have access to independent disagreement resolution services.

Using a disagreement resolution service

Using a disagreement resolution service is voluntary and has to be with the agreement of all parties.

The service must be independent of the council. Parents and young people can also access informal support in resolving disagreements through Durham SEND Information Advice and Support Service and between 2014 and 2016, with the help of independent supporters.

Disagreement resolution arrangements cover all children and young people with SEN, not just those who are being assessed for or have an Education Health and Care (EHC) plan, and a range of disagreements. They are available to parents and young people to resolve disagreements about any aspect of SEN provision, and health and social care disagreements during the processes related to EHC needs assessments and EHC plans.

They can provide a quick and supportive way of resolving disagreements. Used early in the EHC assessment process and the development of the EHC plan, they can prevent the need for mediation, once decisions have been taken in that process, and appeals taken to the Tribunal.

The disagreement resolution service is to help resolve four types of disagreement or to prevent them from escalating further:

The first is between parents or young people and local authorities, the governing bodies of maintained schools and maintained nursery schools, early years providers, further education institutions or the proprietors of academies (including free schools), about how these authorities, bodies or proprietors are carrying out their education, health and care duties for children and young people with SEN, whether they have EHC plans or not. These include duties on the council to keep their education and care provision under review, the duties to assess needs and draw up EHC plans and the duty on governing bodies and proprietors to use their best endeavours to meet children and young people’s SEN.

The second is disagreements between parents or young people and early years providers, schools or post-16 institutions about the special educational provision made for a child or young person, whether they have EHC plans or not.

The third is disagreements between parents or young people and Clinical Commissioning Groups or councils about health or social care provision during EHC needs assessments, while EHC plans are being drawn up, reviewed or when children or young people are being reassessed. Disagreement resolution services can also be used to resolve disagreements over special educational provision throughout assessments, the drawing up of EHC plans, while waiting for Tribunal appeals and at review or during reassessments.

The fourth is disagreements between councils and health commissioning bodies during EHC needs
assessments or reassessments, the drawing up of EHC plans or reviews of those plans for children and young people with SEN. In relation to EHC plans, this includes the description of the child or young person’s education, health and care needs and any education, health and care provision set out in the plan. These disagreements do not involve parents and young people.

A decision by parents and young people not to use disagreement resolution services has no effect on their right to appeal to the Tribunal and no inference will be drawn by the Tribunal if the parties to a disagreement have not used the disagreement resolution services. Disagreement resolution meetings are confidential and without prejudice to the Tribunal process and the Tribunal will disregard any offers or comments made during them. Partial agreement achieved by use of disagreement resolution services can help to focus on the remaining areas of disagreement in any subsequent appeal to the Tribunal.

In County Durham, the disagreement resolution service is provided by:

Barnardo’s Gateshead Disability and Inclusion Support Service (DAISS)
20 Bewick Road
Gateshead
Tyne and Wear
NE8 4DP
0191 478 4667

Independent Mediation

A parent or a young person over the age of 16 has the right to independent mediation and to appeal to the Tribunal if:

a) the Local Authority decides not to carry out an EHC assessment
b) at the end of the assessment, it is decided that an EHC Plan is not required
c) you are not happy with the content of the plan, the provision identified or the school or college placement

You will also have the same rights, following a Statutory Annual Review of the plan. This would also include a decision to discontinue the EHC Plan

The mediation arrangements are specifically linked to decisions about EHC needs assessments and plans. Disagreement resolution services can be used at any time, if both parties agree, including:

- while an EHC needs assessment is being conducted;
- while the plan is being drawn up;
- after the plan is finalised; or
- while an appeal is going through the Tribunal process.

We would want to continue to work with you and try and resolve any area of disagreement but, if this is not possible, you must consider independent mediation before an appeal can be lodged with the SEN Tribunal.

You will not be able to register an appeal with the Tribunal without a certificate from the mediation service. An appeal can be registered with Tribunal either within two months of the original decision or within one month of receiving the certificate, whichever is the later.

You do not have to contact the mediation service if your appeal is only about the school or college named in the Education, Health and Care Plan.
How can a parent or young person seek mediation?

The Children and Families Act 2014 sets out two pathways for going to mediation depending on whether the parent or young person wants to go to mediation about the matters which can be appealed to the Tribunal or whether they want to go to mediation about the health and social care elements of EHC plans.

Mediation on matters which can be appealed to the Tribunal

Parents and young people who wish to make an appeal to the Tribunal may do so only after they have contacted an independent mediation adviser and discussed whether mediation might be a suitable way of resolving the disagreement.

When the council sends the parent or young person notice of a decision which can be appealed to the Tribunal it must tell the parent or young person of their right to go to mediation and that they must contact a mediation adviser before registering an appeal with the Tribunal.

The notice must give the contact details of a mediation adviser, contain the timescales for requesting mediation and the contact details of any person acting on behalf of the council who the parent or young person should contact if they wise to pursue mediation. The notice should also make clear that parents’ and young people’s right to appeal is not affected by entering into mediation.

If the parent or young person is considering registering an appeal and has contacted the mediation adviser, the adviser will provide information on mediation and answer any questions which the parent or young person may have. The information will normally be provided on the telephone, although information can be provided in written form, through face-to-face meetings or through other means if the parent or young person prefers.

Parents and young people do not have to contact the mediation adviser prior to registering their appeal with the Tribunal if their appeal is solely about the name of the school, college or other institution named on the plan, the type of school, college or other institution specified in the plan or the fact that no school or other institution is named. Parents and young people will already have had the opportunity to request a school, college or other institution and to discuss this in detail with the local authority. The disagreement resolution services would be available if parents or young people and local authorities wanted to attempt to resolve the dispute about the placement by making use of these arrangements.

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NE8 4DP

0191 478 4667

Mediation on health and social care elements in an Education, Health and Care (EHC) Plan

Parents and young people can also go to mediation about the health and social care elements of an EHC plan. You do not have to receive mediation advice before going to mediation.
If you are considering mediation, you must tell the local authority about the matters you want to go to mediation about. In particular, you must inform the local authority if you want to go to mediation about the fact that no health care provision or no health care provision of a particular kind, is specified in the plan.

**Appeal to the Special Educational Needs and Disability Tribunal**

You can appeal to the First-tier Tribunal (Special Educational Needs and Disability) if you disagree with your council’s decisions about your child’s special educational needs - for example if they refuse to:

- assess your child’s educational, health and care (EHC) needs
- make a statement of their special educational needs
- reassess their special educational needs
- create an EHC plan
- change what’s in your child’s special educational needs statement or EHC plan

You can also appeal to the tribunal if a council has discriminated against your child or someone else because of your child’s disability. The tribunal must receive your appeal within two months of you getting the letter about the decision. The tribunal is independent of government and will listen to both sides of the argument before making a decision.

The Government are extending the powers of the First-tier Tribunal (SEND), sometimes referred to as the ‘SEND Tribunal’, to make non-binding recommendations about the health and social care aspects of Education, Health and Care (EHC) plans as part of a two-year trial. The trial will apply to decisions made or EHC plans issued/amended from 3 April 2018.

To date, you have only been able to appeal the educational aspects of EHC plans. The trial gives you new rights to request recommendations about the health and social care needs and provision specified in EHC plans, in addition to the educational aspects, when making a SEND appeal. This gives you the opportunity to raise all your concerns about an EHC plan in one place.

It is only possible for the Tribunal to consider the health and/or social care aspects of the EHC plan where you are already making an appeal in relation to the education aspects of the EHC plan and the education aspect must remain live throughout the appeal.

You can ask the Tribunal to make non-binding recommendations on health and/or social care aspects of EHC plans as part of an appeal relating to:

- a decision by the local authority not to issue an EHC plan
- a decision by the local authority not to carry out a re-assessment for a child/young person who has an EHC plan
- a decision by the local authority not to amend an EHC plan following a review or re-assessment
- a decision by the local authority to cease to maintain an EHC plan
- the description of the child/young person’s special educational needs in an EHC plan
- the special educational provision specified in an EHC plan
- the school or other educational institution named in an EHC plan

If you wish to appeal against a local authority decision on any of the grounds above and want to request that the Tribunal considers your concerns about the health and/or social care aspects of the EHC plan, you should follow the normal process for bringing an appeal to the Tribunal and tick the box on the form relating to a health and/or social care appeal. Advice on making SEND appeals to the Tribunal is available from the GOV.UK website.
There will be an independent evaluation of the trial to inform a decision on whether the new tribunal recommendation powers should be continued after the trial. It is important that the evaluation is based on robust evidence, and the evaluators are therefore strongly encouraging participation from parents and young people through telephone or online interviews. Parents and young people that take part in the trial will receive a letter from the Tribunal explaining more about the evaluation and how their personal data will be stored confidentially and how it will be protected.

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It is only possible for the Tribunal to consider the health and/or social care aspects of the EHC plan where you are already making an appeal in relation to the education aspects of the EHC plan and the education aspect must remain live throughout the appeal.

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- a decision by the local authority not to amend an EHC plan following a review or re-assessment
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Who can appeal?

You can appeal as either:

- the parent
- the young person, if you’ve finished year 11 and you’re under 25.
How do I find out more about the SEND Tribunal?

You can find out more about appealing to the First-tier Tribunal (Special Educational Needs and Disability) on Gov.uk.

Useful documents

The following leaflets in the forms and guidance section of the Ministry of Justice site provide more information:

- How to appeal against a SEN Decision
- Appeal form - statement of educational needs
- EHC appeal form - child of or under statutory school age
- EHC appeal form - young person over statutory school age
- Coming to the Tribunal
- Information for Children and Young People
- Extended powers SEND tribunal: national trial

For further information and support, please contact Durham SEND Information Advice and Support Service.

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Call the Families Information Service: 03000 269 995 or email: fis@durham.gov.uk

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