

Information for Parents and Carers

Challenging Decisions - Information on Mediation and Rights of Appeal

Mediation

In order to register an appeal you must first contact an independent mediation adviser and obtain a certificate to show that you have done so.

Mediation is a voluntary process for parents and young people, which can be used if agreement cannot be reached about matters related to EHC plans. It is provided by a trained and accredited mediator who is independent of the local authority and Clinical Commissioning Group.

Mediation is available to parents or young people if there is a disagreement about the local authority's decision:

- not to carry out an EHC needs assessment or re-assessment
- not to draw up an EHC plan after an EHC needs assessment has been done
- not to amend an EHC plan after an annual review or re-assessment
- to cease to maintain an EHC plan.

Mediation must also be available if parents or young people disagree with:

- the parts of the EHC plan that describe the child or young person's special educational needs
- the special educational provision set out in the EHC plan
- the health and social care elements of an EHC plan.

A request for mediation must be made within 2 months of the date of the decision notice by the local authority.

Once you have contacted the mediation adviser you can choose whether you wish to go to mediation or not. You will need a certificate from the mediation adviser before you can register your appeal with the SEND Tribunal.

There are some circumstances in which you do not need to have a certificate from a mediation adviser before you register the appeal:

- about the name of the school, college or other institution named on the EHC plan
- the type of school, college or other institution specified in the plan
- or the fact that no school or other institution is named.

In addition, you do not need to seek mediation advice if the appeal is solely about the health and social care elements of an EHCP.

Registering an appeal with the Tribunal

The Tribunal hears appeals against decisions made by local authorities in England in relation to children's and young people's EHC needs assessments and EHC plans. Parents (in relation to children from 0 to the end of compulsory schooling) and young people (over compulsory school age until they reach age 25) can appeal to the Tribunal, following contact with a mediation adviser in most cases (see above for details).

Parents and young people can appeal to the Tribunal about:

- a decision by a local authority not to carry out an EHC needs assessment or re-assessment.
- a decision by a local authority that it is not necessary to issue an EHC plan following an assessment.
- the description of a child or young person's SEN specified in an EHC plan, the special educational provision specified, the school or other institution or type of school or other institution (such as a mainstream school/college) specified in the plan or that no school or other institution is specified.
- an amendment to these elements of the EHC plan.
- a decision by a local authority not to amend an EHC plan following a review or re-assessment.
- a decision by a local authority to cease to maintain an EHC plan.

The Tribunal does not hear appeals about Personal Budgets, but will hear appeals about the special educational provision to which a Personal Budget may apply.

Parents and young people who are unhappy with decisions about the health and social care elements of an EHC plan can go to mediation. They can also complain through the health and social care complaints procedures.

The following conditions apply to appeals:

- the parent or young person can appeal to the Tribunal when the EHC plan is initially finalised, following an amendment or a replacement of the plan.
- appeals **must** be registered with the Tribunal within two months of the local authority sending a notice to the parent or young person of the decision about one of the matters that can be appealed to the Tribunal or within one month of a certificate being issued following mediation or the parent or young person being given mediation information.
- the right to appeal a refusal of an EHC needs assessment will be triggered only where the local authority has not carried out an assessment in the previous six months.
- when the parent or young person is appealing about a decision to cease to maintain the EHC plan the local authority has to maintain the plan until the Tribunal's decision is made.

Disagreement Resolution

Under the Education Act and the new Special Educational Needs and Disability Act Code of Practice- 0-25 years, local authorities must make a Disagreement Resolution service available to parents and young people. If the disagreement is not about a finalised EHC plan or a decision about an assessment then Disagreement Resolution can be used to resolve differences.

Mediation is used at the end of the assessment and planning process; and it is one of the possible steps of the appeal process. Disagreement Resolution can be used at any time and it can be an early opportunity to raise concerns about support whether or not there is an EHC Plan in place, such as:-

- How education, health and care duties are being carried out by a school or local authority, whether there is an EHC Plan or not.
- What special educational support has been provided for a young person, whether they have an EHC Plan or not.
- How the EHC Assessment 'process' or the 'drafting' of an EHC Plan is been conducted, before any decisions have been made.

More information about Mediation, Appeals and Dispute Resolutions can be found on Gateshead's Local Offer pages:

<https://www.gateshead.gov.uk/article/4020/Family-group-conference-and-mediation-service>

Other useful information sheets are:

- **Going to meetings**
- **What if I do not agree with a decision about SEN provision**

If you need to ask any questions or for further advice, please contact:

Barnardo's SENDIASS on **0191 4784667**

or email **DAISS@barnardos.org.uk**

