



Department
for Education

Disagreement Resolution (SEN and Disability):

**Guide for post-16 providers and schools
transferring pupils into post-16 provision**

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About this guide

This guide is for providers in the post-16 sector and schools transferring pupils from Year 11 onwards into the post-16 sector. It is designed to help them to understand the options available to parents and young people who are seeking to resolve disagreements about the support that is provided for a young person's special educational needs (SEN), including where an Education, Health and Care (EHC) plan is in place.

Background

On 1 September 2014, the [Children and Families Act 2014](#) ('the Act') introduced important changes to the system of support for children and young people who have special educational needs (SEN) or a disability, including a requirement for further education (FE) providers to have regard to the [0-25 SEND Code of Practice](#).

The new system gives parents, children and young people more opportunity to be informed about and involved in decisions relating to education, health and social care support. While it has been designed to be collaborative and to help families, local authorities and health bodies to reach agreement earlier and more easily, there may still be times when parents and young people disagree with local authorities' and/or clinical commissioning groups' decisions about education, health or social care issues. As a result of the reforms, post-16 providers may now find they are required to take part in, or be aware of, processes around the resolving of disagreements about the support provided for the SEN of young people who are attending their institution. Chapter 11 of the Code of Practice describes the processes in more detail.

Resolving disagreements locally

Support for young people who have special educational needs in a post-16 setting can be provided either through the internal resources within a college or other provider, or through an EHC plan. An EHC plan is drafted by a local authority following an EHC needs assessment and the authority then has legal responsibility to ensure that the young person receives the special educational provision specified in the plan. It is always best to try to resolve disagreements about SEN support and EHC plans locally. The first step should always be for young people and parents to talk to the relevant school, college or post-16 provider staff about their concerns, using the institution's own complaints procedure where appropriate. If this does not resolve the issues, young people and parents can use the disagreement resolution and mediation services that local authorities must provide (see the relevant sections below). Young people and parents can access informal support in resolving disagreements through their local impartial **Information, Advice and Support Service** and, up to 2016, with the help of **independent supporters**.

Information, Advice and Support Services can provide impartial advice about the law on

SEN, local SEN arrangements and support for a child or young person's needs. The service can also help parents and young people prepare for meetings with a school, college/other post-16 provider, local authority or the SEND Tribunal. Contact details for local services can be found through this weblink: www.iassnetwork.org.uk.

Independent supporters are available to help young people and parents through the process of EHC needs assessment and plan development. Local authorities should tell young people and their parents about the availability of independent supporters at the start of the EHC needs assessment process, whether this is for transfer from a statement or a first-time needs assessment. Further details are available here:

<http://www.councilfordisabledchildren.org.uk/independentsupport>

Disagreement Resolution Services

Local authorities must make **disagreement resolution services** available to parents and young people. Use of disagreement resolution services is voluntary and has to be with the agreement of all parties. The service, while commissioned by the local authority, **must** be independent of it.

Disagreement resolution arrangements cover all children and young people with SEN, not just those who are being assessed for or have an EHC plan. Disagreements can include those between parents or young people and post-16 institutions about how these bodies are carrying out their duties for children and young people with SEN, whether they have EHC plans or not. These duties include those on governing bodies and proprietors to use their best endeavours to meet children and young people's SEN.

Disagreement resolution services also cover disagreements between parents or young people and post-16 institutions about the special educational provision made for a young person, whether they have an EHC plan or not. Disagreement resolution services can be used at any time, if both parties agree, including:

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

Mediation

Mediation is a statutory and independent process linked to decisions about EHC needs assessments and plans. Parents and young people who wish appeal to the SEND Tribunal must first contact an independent mediation adviser and discuss whether mediation might be a suitable way of resolving the disagreement (if the appeal is only about the educational institution named in the EHC plan, there is no need to contact a mediation adviser).

When the local authority sends notice of a decision which can be appealed to the Tribunal (see 'When can young people or their parents go to the Tribunal?' below), it must tell them:

- about their right to go to mediation
- that they must contact a mediation adviser before registering an appeal with the Tribunal
- the contact details of a mediation adviser

Having contacted a mediation adviser, young people or their parents decide whether or not to go to mediation.

- If they decide not to go to mediation, the adviser will issue a certificate confirming that they have decided not to proceed. The young person or parent must present the certificate to the Tribunal to register an appeal.
- If they decide to go to mediation, the certificate will be issued at the end of the process, whether or not it has been successful in resolving the disagreement.

Only once a mediation certificate is issued can an appeal be registered at the SEND Tribunal.

What is the First-tier Tribunal (SEN and Disability)?

The Tribunal forms part of the First-tier Tribunal (Health, Education and Social Care Chamber). Tribunals are overseen by Her Majesty's Courts and Tribunals Service. The Tribunal is independent of government and will listen to both sides of the argument before making a decision.

What is the role and function of the Tribunal?

The Tribunal hears appeals against decisions made by local authorities in England **in relation to children's and young people's Education, Health and Care (EHC) needs assessments and plans**. It also hears disability discrimination claims against schools and against local authorities when the local authority is the responsible body for a school. Disability discrimination claims by young people against post-16 institutions are made to the county courts.

When can young people or their parents go to the Tribunal?

The Tribunal hears appeals against decisions made by the local authorities in England in relation to children's and young people's EHC needs assessments and plans. This includes situations where young people or their parents want to make an appeal relating to:

- a decision to by a local authority not to carry out an EHC needs assessment
- 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 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 young person's special educational needs in an EHC plan (section B)
- the special educational provision specified in an EHC plan (section F)
- the educational provider named in an EHC plan (section I)

How do parents and young people make an appeal?

Step-by-step guidance on the process of appealing to the Tribunal and what it involves can be found on GOV.UK at: www.gov.uk/special-educational-needs-disability-tribunal.

Parents or young people need to fill in a particular form and send it to the Tribunal. If they have any queries about this, they can contact the Tribunal by email at sendistquiries@hmcts.gsi.gov.uk or by phone on 01325 289 350.

Can both parents and young people make an appeal?

Young people (over compulsory school age until they reach age 25) can appeal to the Tribunal. Young people can enter an appeal in their own name if they wish, but can also have their parents' help and support if needed. Young people have the right not to involve their parents if this is their wish.

What are the timescales?

Parents/young people must register their appeal within two months of the date of the local authority decision with which they disagree or one month from the date of the mediation certificate, whichever is later.

Cases are usually heard within 20 weeks unless either party asks for an earlier or later date and all agree, or it becomes necessary to adjourn the hearing.

The Tribunal aims to prioritise particularly urgent appeals where it can, for instance appeals concerning the placement on transfer between schools or to a further education institution.

If a young person or parent is concerned about the timing of a hearing, they can contact the Tribunal service to discuss it, using the contact details given above under 'How do parents and young people make an appeal'.

What is the process of attending a hearing like for young people and parents?

The Tribunal tries to ensure that the process of appealing is as user-friendly as possible, and that hearings are informal rather than overly legalistic or technical. They are heard by a panel – one member will be a judge and the others will be professionals who have experience and knowledge of children with SEN and disabilities. The Tribunal emphasises that it should not be necessary for a parent or young person to engage legal representation when appealing a decision. However, parents and young people may find it helpful to have advice in preparing their appeal or support from a voluntary organisation or friend at a hearing.

Are there issues that the Tribunal can't decide?

The Tribunal cannot deal with a case if the issue is:

- the way the local authority carried out the EHC needs assessment and plan development, or the length of time that it took
- how the local authority or the pos-16 provider is arranging to provide the help set out in the young person's EHC plan
- the way the post-16 provider is meeting the young person's needs if they need SEN support but do not have an EHC plan
- the information in the EHC plan about the young person's non-educational needs or how the local authority plans to meet those needs

Who deals with the issues the Tribunal cannot determine?

Parents and young people should in the first instance discuss their concerns directly with the school/post-16 provider or the local authority and use their published complaints processes. The Local Government Ombudsman provides 'top tips' for making a complaint to a local authority on its website (www.lgo.org.uk/making-a-complaint/how-to-complain/top-tips/).

Schools and post-16 providers should publish details of their complaints procedures on their websites. Complaints about post-16 providers can also be escalated to the Education Funding Agency (EFA) for learners aged 16-18, and those with EHC plans up to 25, and the Skills Funding Agency (SFA) for learners aged 19+ without EHC plans. Further information is available here:

EFA: www.gov.uk/government/publications/complaints-about-post-16-efa-funded-institutions

SFA: <https://www.gov.uk/complainfurthereducationapprenticeship>

The Local Government Ombudsman (LGO) can investigate complaints against local authorities where the complaint has not been resolved by the local authority's complaints procedure. The LGO investigates the process by which local authority decisions were made and whether there has been maladministration, rather than examining the merits of a decision which has been properly taken. Complaints can be made to the LGO via its website (www.lgo.org.uk/making-a-complaint).

If the LGO finds evidence of fault in the way a decision has been made, it will generally ask the local authority to reconsider the decision and consider if other remedies are available. In addition, if during the course of an investigation the LGO identifies other children or young people who are similarly affected it can widen the scope of the investigation to include them. The LGO cannot make local authorities carry out its recommendations following investigation of a complaint, but in practice authorities almost always do so.

What happens if a young person/their parent wins a Tribunal appeal?

If the Tribunal finds in favour of the young person or parent, the local authority must act on the tribunal's decision within a set amount of time:

Decision	When local authority must act on decision
Start an assessment or reassessment	Within 4 weeks
Make an EHC plan for the young person	Within 5 weeks
Amend an EHC plan	Within 5 weeks
Change the educational institution named in the EHC plan	Within 2 weeks
Continue to maintain an EHC plan	Immediately
Cease an EHC plan	Immediately

Young people or their parents can complain to the Local Government Ombudsman if the local authority doesn't act on the decision.

And what if they lose?

Young people or their parents may be able to:

- make a further appeal if they think there's been a mistake in the process
- ask the Tribunal to 'review' the decision, for example if their circumstances have changed since they got the decision or the decision contains a mistake
- ask for permission to appeal to the Upper Tribunal (Administrative Appeals) Chamber if the Tribunal has made a mistake about the law

They must do this within 28 days of the date of the Tribunal's decision letter.

Where can young people and parents get advice?

The parents' guide to the SEND Code of Practice contains a helpful section on challenging decisions, including going to the Tribunal. This can be found at:

www.gov.uk/government/publications/send-guide-for-parents-and-carers

If young people or their parents are able to access online resources, the advice on GOV.UK is helpful in providing step-by-step guidance on the Tribunal appeal process, including links to the various forms: www.gov.uk/special-educational-needs-disability-tribunal.

The Council for Disabled Children has also produced two factsheets about the Tribunal and about making other complaints which can be downloaded and printed for young people or parents:

www.councilfordisabledchildren.org.uk/media/726546/isfactsheet24_tribunal.pdf

www.councilfordisabledchildren.org.uk/media/726552/isfactsheet25_complaints.pdf

Parents and young people may be eligible for legal aid to help with legal costs. They can get advice from Civil Legal Advice if they're eligible.

<https://www.gov.uk/legal-aid>

<https://www.gov.uk/check-legal-aid>

People can also get free help and advice from IPSEA (Independent Parental Special Education Advice) or their local Information, Advice and Support Service. They can contact the Information, Advice and Support Services Network for details of their nearest service.

<https://www.ipsea.org.uk/contact/advice-and-support>

<http://www.iassnetwork.org.uk/>



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