**Education, Health and Care Plan**

**Resolving disputes, mediation, appeals and tribunals**

**What to do if you don't agree with the Local Authority over your child's Education, Health and Care Assessment/ Plan**

**April 2022**

If you are unhappy about any decisions that have been made regarding your child, or you feel as if you haven't been listened to, you should discuss the issues with the SEN Caseworker who is dealing with your child's assessment. Usually any disagreement can be sorted out quickly.

Your child's needs must come first. It is in your child's best interests if everybody works together to give him/her the help which he/she needs.

For impartial information, advice and support you can contact:

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| **[Newcastle Special Educational Needs and Disabilities Information, Advice and Support Service (newcastlesendiass.co.uk)](https://www.newcastlesendiass.co.uk/)**  E-mail**:** [**sendiassadmin@newcastle.gov.uk**](mailto:sendiassadmin@newcastle.gov.uk)  Telephone: **0191 284 0480** |

If an agreement still can't be reached and you feel that your child would benefit from a different decision (e.g., about the kind of help they need or where this can be provided), then you have the right to appeal to the First-Tier Tribunal, Special Educational Needs and Disability (SEND).

Before you can appeal you must contact an independent mediation advisor and discuss whether mediation might be a suitable way of resolving the disagreement.

**Disagreement resolution**

If a parent or young person feels they have been unable to resolve an issue through discussions with the relevant people, disagreement resolution services are available.

Disagreement resolution services are for parents of all children and young people with SEND, not just those being assessed or who have an EHC Plan.  The process can only take place if all parties agree. In Newcastle, we use Chapel Mediation & Consultancy Service to provide disagreement resolution services.  It helps resolve disagreements about:

* how early years providers, schools and further education institutions are carrying out their duties for children and young people with SEND
* how social care services are carrying out their duties for children and young people with SEND
* how health care services are carrying out their duties for children and young people with SEND
* the special educational provision made for a child or young person
* the social care provision made for a child or young person
* the health care provision made for a child or young person
* us deciding not to undertake an EHC needs assessment
* us deciding not to issue an EHC plan
* the special educational, health or social care support we or the CCG are providing in an EHC plan

This is voluntary but all parties must agree to take part.

The service is free of charge, impartial and confidential and will not affect any decisions to go to appeal later. Please see link to the website.

[**Chapel Mediation and Consultancy Services | Newcastle Support Directory**](https://www.newcastlesupportdirectory.org.uk/chapel-mediation-and-consultancy-services)

Or please contact the SEND Support, Assessment and Review Team on 0191 277 4650 for further information.

**Mediation**

If you wish to consider mediation **you must** contact the mediation service **[Chapel Mediation and Consultancy Services | Newcastle Support Directory](https://www.newcastlesupportdirectory.org.uk/chapel-mediation-and-consultancy-services)**

within two months of the written notice of the local authority’s decision was sent to you.

You can use the Mediation Service in very specific cases if the local authority decides:

* not to carry out an EHC needs assessment
* not to draw up an EHC Plan
* to cease to maintain an EHC Plan

Or if you do not agree with the final EHC Plan or an amended EHC plan following a review.

You must inform the local authority that you are going to mediation and what the issues are, by informing your SEN Case worker.

You do not have to go to mediation if the issue is about the name of the education provider written in the EHC Plan, in this case you can go straight to appeal with the Tribunal.

If you ask for mediation, the service will provide information on mediation, then will set up a meeting within 30 days and the local authority must attend.

This service is free of charge, impartial and confidential and will not affect any decisions to go to appeal later.

The local authority will pay certain expenses (in line with Government guidance) in connection with the child's parent or young person attending the mediation but the parent or young person must:

* get prior agreement with the local authority on what expenses can be claimed
* provide satisfactory supporting evidence/ receipts of the expenses when a claim is made.

If after talking to the mediation service you do not wish to go through mediation you will be issued with a mediation certificate, within three working days, which will allow you to go to appeal to the Tribunal if you wish to.

**The First-Tier Tribunal (SEND)**

The First-Tier tribunal (SEN and Disabilities) is overseen by Her Majesty's Courts and Tribunals Service.

**The role of the Tribunal**

The Tribunal hears appeals by parents and young people who are in dispute with the local authority on specific issues related to the EHC needs assessment and the EHC Plan.

Appeals can be made in relation to:

* decisions by the local authority not to carry out an EHC needs assessment or reassessment
* decisions by the local authority that it is not going to issue an EHC plan following an assessment and you disagree with the reasons
* the description of your child's/ young person's special educational needs in a EHC Plan
* the special educational provision written into the EHC Plan
* the school or other education provision named in the EHC Plan
* decisions made by the local authority not to amend a EHC Plan following a review or reassessment
* decisions made by the local authority to cease to maintain a EHC Plan

**How do I make an appeal to the First Tier Tribunal Service?**

Before making an appeal you **must** have contacted the [**Chapel Mediation and Consultancy Services | Newcastle Support Directory**](https://www.newcastlesupportdirectory.org.uk/chapel-mediation-and-consultancy-services) first to see if mediation would be a suitable way to resolve the dispute.

The Mediation Service will either set up a meeting to resolve the dispute as explained above or explain what you have to do if you want to take this further and appeal at the Tribunal.

The First-tier Tribunal (SEND) can make non-binding recommendations about the health and social care aspects of EHC plans. The trial will apply to decisions made or EHC plans issued/amended from 3 April 2018. For more information see [**First-tier Tribunal (Special Educational Needs and Disability) - GOV.UK (www.gov.uk)**](https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability)

You can seek disagreement resolution or mediation**.** These issues can also be dealt with through the health complaints procedure and the social care complaints procedure.

After talking with the Mediation Service, if you decide you want to go straight to appeal at the Tribunal, the Mediation Service will issue you with a 'Mediation Certificate' within 3 working days.

The 'Mediation Certificate' will allow you to lodge an appeal with the Tribunal.

**You cannot register an appeal at the Tribunal without a certificate.**

**If you want to make an appeal to the Tribunal you must:**

* lodge the appeal with the Tribunal within 2 months of the local authority's original decision, or
* send a Mediation Certificate to the Tribunal within 1 month of receiving it whichever is the latest.
* send a copy of the decision that you are appealing against and the date the local authority made the decision or the date of the mediation certificate to the Tribunal. Also give the reasons why you are appealing and include any relevant documents e.g. Assessments/ EHC Plan.

The Tribunal will inform you of the date of the Tribunal Hearing and ask for evidence from all parties.

The appeal will be heard by a judge and a panel of tribunal members. They will look at the evidence and decide to either:

* dismiss your appeal
* order the local authority to carry out an assessment if that is the issue
* order the local authority to make or maintain an EHC Plan
* order the local authority to maintain an amendment

If you decide to appeal Legal Aid may be available to help with preparation of the appeal but not for representation at the Tribunal.

**More information and appeal forms**

Further information and appeal forms are available from  [**Newcastle Special Educational Needs and Disabilities Information, Advice and Support Service (newcastlesendiass.co.uk)**](https://www.newcastlesendiass.co.uk/)

or online at [**www.justice.gov.uk/tribunals/send**](http://www.justice.gov.uk/tribunals/send)