

What if I do not agree
with decisions about SEN
provision?



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This information is about what you can do if a child has special educational needs (SEN) or a disability and you are unhappy about the help they are getting.

The SEND Code of Practice says:

Decisions about provision for children and young people with SEN or disabilities should be made jointly by providers, parents, and children and young people themselves, taking a person-centred approach, with the views of children, young people and parents taken into account when those decisions are made. (11.1)

School/College Concerns

First steps

The first step is to talk to their Teacher, Head Teacher or to the Special Educational Needs Coordinator (SENCo). Ask for a meeting at the school/college and discuss your concerns.

If you think the school is doing all it can but your child needs even more help, you can ask the Local Authority for an **EHC needs assessment**. Please see our **booklet on EHC needs assessments**, this is on our website.

If you have concerns and your child has an **Education, Health and Care Plan (EHCP)** you can also contact **your EHCP Co-ordinator**.

Norfolk SEND Partnership IASS at any point can:

- ◆ Listen to your concerns
- ◆ Help you sort out the issues
- ◆ Identify other people who can support you
- ◆ Help you decide what to do next
- ◆ Explain the law and your rights.

If you think that the school or college could do more, you can complain using their complaints procedure. You can visit their website or ask for their complaints procedure. You need to:

- ◆ Have tried to resolve your complaint by speaking to the right people
- ◆ Put your complaint in writing, using the word 'complaint'
- ◆ Be clear about all the issues you want resolved
- ◆ State what you want to happen



It might be helpful to ask a friend or relative to attend a meeting with you. It is a good idea to keep notes or have records of what the school has done and has told you.

The next step -

Disagreement resolution services

The disagreement resolution service is there to help resolve three kinds of disagreement between parents or young people and the organisations that are responsible for making provision for children and young people with special educational needs. These are about:

- ◆ How early years providers, schools and further education institutions carry out their duties for children and young people with SEN. For Local Authorities this includes keeping education and care provision under review, assessing needs and drawing up EHCP's. For governing bodies and proprietors of schools it includes using their "best endeavours" to meet children and young people's SEN
- ◆ The special educational provision made for a child or young person by early years providers, schools or further education institutions. This includes children and young people receiving **SEN support** and those with **EHCP's**
- ◆ Health or social care provision when this part of an **EHC needs assessment**, while EHCP's are being drawn up, reviewed or when children or young people are being reassessed

In Norfolk this service is provided by Kids. They are independent and will provide a trained mediator to facilitate a discussion. The purpose is to look for a way forward that all the parties accept. The service is free and confidential and you can choose whether to use it or not.

Kids

Contact 03330 062 835
senmediation@kids.org.uk
www.kids.org.uk/mediation

Disagreement resolution services can also be used:

- ◆ During EHC needs assessments
- ◆ While EHCP's are drawn up
- ◆ While waiting for Tribunal appeals
- ◆ At review
- ◆ During reassessments
- ◆ When having somebody who is not personally involved chair a meeting to help find a way forward

Norfolk SEND Partnership IASS can help you decide if independent disagreement resolution is right for you.

You can find out more about disagreement resolution services in the **SEND Code of Practice sections 11.6 to 11.10**.



Mediation

Mediation is a type of disagreement resolution for disagreements that can be appealed to the Special Educational Needs and Disability Tribunal. The service is free and confidential.

The SEND Code of Practice says:

If parents and young people want it to, mediation can take place following decisions by a Local Authority not to carry out an EHC needs assessment, not to draw up an EHCP, after they receive a final EHCP or amended plan, following a decision not to amend an EHCP or a decision to cease to maintain an EHCP. (11.13)

If you wish to register an appeal with the **First Tier Tribunal (SEN and disability)** you first have to **consider** whether to enter mediation and obtain a certificate saying you have considered it. This is called **mediation advice**. If you decide not to go into mediation and tell the mediation adviser, they will send you a certificate within 3 working days and you can then register your appeal. You do not have to go into mediation if you do not want to – you only have to consider whether to or not.

The Local Authority must tell you about mediation and who to contact for the initial advice when they send you their decision. You must contact the mediation adviser within two months of getting the decision. Your time limit for appealing to the Tribunal is two months from the date of that decision, or one month from the date of the mediation certificate, whichever is the later.

There are two exceptions to this rule. You can register an appeal without considering mediation first if the appeal is only about the name of the school, or college named on the plan, the type of school or college specified in the plan or the fact that no school or other institution is named. Section I of the EHCP, or for disability discrimination.

If you choose mediation the Local Authority (or Clinical Commissioning Group) must take part. The meeting will be arranged within 30 days.

An independent mediator runs the meeting. When the meeting has finished the mediator issues you with a certificate within 3 working days. You need this certificate if you still want to register an appeal with the First Tier Tribunal. You have one month from the date of certificate or written within two months of Local Authority decision, whichever ever is the later.

Mediators must be trained and accredited and are independent of the Local Authority and Clinical Commissioning Group. **This service is provided in Norfolk by Kids**, see page 4.

If you go over the two month deadline for considering mediation, or want to appeal without a certificate, the law says you can still approach the Tribunal to see if you can register your appeal.

Norfolk SEND Partnership IASS can help you decide if mediation is right for you.

You can find out more about mediation in the **SEND Code of Practice sections 11.13 to 11.38**.

Appeals

The SEND Code of Practice says that 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 EHCP following an assessment*
- ◆ *The description of a child or young person's SEN specified in an EHCP, 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 EHCP*
- ◆ *A decision by a Local Authority not to amend an EHCP following a review or re-assessment*
- ◆ *A decision by a Local Authority to cease to maintain an EHCP*

(11.45)

You can also appeal against a school exclusion. You can find out more about school exclusion appeals from IPSEA www.ipsea.org.uk or in our **Exclusions booklet available on our website**

Norfolk SEND Partnership IASS can offer support if you wish to make an appeal

Do I have to choose between making a complaint, using disagreement resolution, appealing to the Tribunal and mediation?

Usually you can follow more than one route. For example you can still make a complaint if you have already tried disagreement resolution. **Norfolk SEND Partnership IASS** can explain your rights and the different procedures.

Seeking further help

If you disagree with how the Local Authority has acted and would like to make a complaint you can contact them on **0344 800 8020** or visit **www.norfolk.gov.uk**.

The Local Government Ombudsman (LGO) investigates complaints which have not been resolved by the Local Authority complaints procedure, and consider if correct actions and procedures have been followed. In most cases there is an expectation that you will have followed the Local Authority complaints procedure first before going to the LGO. If the case is serious and the child is missing education then LGO may start assessing before going to the Local Authority. See **The SEND Code of Practice 11.89**.

If the LGO finds the Local Authority is at fault they can ask them to reconsider and made recommendations. These recommendations can include compensation or an apology. The Local Authority does not have to carry out the recommendations, but they usually do.



Parents and young people can apply to have their concerns taken to **Judicial Review (High Court)**. It will be considered how the Local Authority and public bodies have carried out duties for example: how decisions were made in an EHCP or failure to provide provision outlined in the EHCP.

The costs of going to Judicial Review can be very high if a case goes ahead. You may be able to obtain funding through legal aid.

check if you are eligible for legal aid
www.gov.uk/check-legal-aid



Norfolk SEND Partnership IASS can offer impartial information and advice about possible ways forward and tell you about local or national groups that provide relevant support

YOUR NOTES





We also:

- ◆ Produce a newsletter each term
- ◆ Have information leaflets available on our website
- ◆ Ensure the views of children, young people and parent/carers are represented when influencing SEND policy and practice

Contact us:

Norfolk SEND Partnership

Information Advice and Support Service

148 Woodside Road

Norwich NR7 9QL

Office Hours 9am-5pm Mon-Fri

Tel: 01603 704070

sendpartnership.iass@norfolk.gov.uk

www.norfolksendpartnershiass.org.uk



Disclaimer: This is a guide and should not be treated as legal advice. Although SEND Partnership makes all reasonable efforts to ensure that the information contained in this booklet is accurate and up to date at the time of publication we cannot accept responsibility suffered as a consequence of any reliance placed upon it.

**If you need this leaflet in another format or language please contact us
and we will do our best to help.**

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