

What if I do not agree?



- **School/college concerns**
- **Disagreement resolution**
- **Mediation**
- **Appealing an EHCP**
- **Disability discrimination appeals**
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What if I do not agree with decisions about SEN provision?

This information is about what you can do if you or your child has special educational needs (SEN) or a disability and you are unhappy about the help being given in:

- Schools, including non-maintained special schools
- Further education colleges and sixth form colleges
- Academies (including free schools, university technical colleges and studio schools)
- Specialist Resource Base (SRB)
- Independent schools and independent specialist providers approved under section 41 of the Children and Families Act 2014
- All early years providers in the maintained, private, voluntary and independent sectors that are funded by the local authority

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)

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.

School/College Concerns

First steps

The first step is to talk to the teacher/tutor, if you need to discuss things further you can speak to the Head Teacher/course director or to the Special Educational Needs Coordinator (SENCo). We would advise you to ask for a meeting at the school/college to discuss your concerns.

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 they have done and have told you.

We have a **meeting planner template** in the booklets section of our website which may help.

If you think that the school or college could do more, you can complain using their complaints procedure available on their website or ask for a copy.

You need to:

- ◆ Have already tried to resolve your complaint by speaking to the right people (see first paragraph)
- ◆ Put your complaint in writing, using the word 'complaint'
- ◆ Be clear about all the issues you want resolved
- ◆ State what you want to happen
- ◆ Give a reasonable time by which you would like a response



The next step -

Disagreement resolution services

If you feel that you, and the school/college need a more formal approach you can use the disagreement resolution service. This is free, both parties have to agree to use it.

The disagreement resolution service is there to help resolve three kinds of disagreements 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 an **Education, Health & Care Plan (EHCP)**
- ◆ Health or social care provision when this is 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.

Disagreement resolution services can also be used:

- ◆ While waiting for a Tribunal appeal
- ◆ At review
- ◆ At any time that relationships have broken down and you cannot find a way forward
- ◆ When having somebody who is not personally involved chair a meeting to help find a way forward would be helpful

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

If you think the school/college is doing all it can but you or your child needs even more help, you or the school/college can ask the local authority for an **EHC needs assessment**. Please see our selection of **EHCP booklets**.

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

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**.

The SEND Code of Practice says that parents and young people can appeal to the SENDIS 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)

Mediation

Mediation is a type of disagreement resolution for disagreements that can be appealed to the Special Educational Needs and Disability Tribunal (SENDIST). 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 take part in mediation. This is called **mediation information, advice and support (MIAS)**. If you decide not to use mediation after discussing the options 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 use 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 at Kids within two months of getting the decision from the LA.

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 in section I of the plan, the type of school or college specified in the plan or the fact that no school or other institution is named or for disability discrimination.



If you choose mediation the Local Authority 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 two months from the date of the final EHCP/final EHCP after annual review or the decision letter following an annual review (decision to cease or maintain) and one month from the date on the mediation certificate, whichever 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 but they may say no.

Appealing an EHCP decisions to SENDIST

You can download the correct form from the SENDIST website.

- Form 35—Refusal to issue an EHCP, appeal section B, F and I and health and social care recommendations
- Form 35a—Refusal to assess for EHCP

Photocopy the paperwork you are asked to provide and send to SENDIST by email or post. Ensure you read through all the paperwork that comes back from the tribunal and keep a record of all important dates. It is helpful to continue to discuss changes and options with the local authority to see if a decision can be made which you all agree on. You can withdraw the appeal once you have the changes in writing.

The SENDIST website has helpful videos on what to expect at a tribunal hearing.

The SENDIST Disability discrimination appeal

You can download the correct form from the SENDIST website.

- SEND 4a—Claim by a parent
- SEND 4b—Claim by a young person

Before your appeal you need to prepare your claim, this involves gathering as much evidence as possible to support your case. There is a time limit for making a claim. The claim must be received by the tribunal within six months of the last act of alleged discrimination. The tribunal will first decide if the child or young person has a disability as described by the Equality Act 2010 before going further with the claim.

Please see our Disability Discrimination booklet available on our website.

If you are making an appeal against a private nursery, further education college or a local authority this would need to be brought in the County Court. If you wish to bring a claim in the County Court, you will need to seek advice from a solicitor.



First-tier Tribunal (SEND)

www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability

Contact—01325 289350

Email—sendistqueries@hmcts.gsi.gov.uk

Appealing a school exclusion

You can appeal against a school exclusion. Your case can be put forward to the governing body of the school. For a fixed term exclusion of less than 5 days they do not have to meet with you but must consider your views.

If the governors agree with the permanent exclusion you may then ask the school for an Independent Review Panel (IRP) within 15 school days. If you feel you or your child's SEN is relevant to the exclusion you may include in the request that the local authority or Academy Trust appoint an SEN expert to attend the review.

The IRP panel is set up by the local authority and must have 3 or 5 members. The hearing must be held within 15 school days after the notice of appeal is received by the school. You are entitled to take a friend or advocate.

You can find out more in our **Exclusions booklet available on our website.**

Norfolk SEND Partnership IASS can give you further information if you wish to make an appeal

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 the LGO may start assessing before going to the Local Authority. See **The SEND Code of Practice 11.89 on our website**.

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 taking to **Judicial Review (High Court)**. It will consider 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



We also:

- ◆ Produce a newsletter each term
- ◆ Have information booklets 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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