

WHAT IF I DO NOT AGREE WITH DECISIONS ABOUT SEN PROVISION?

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

Sendias Bathnes 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.

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)

First steps

If you are not happy about the help that your child has at their educational setting the first step is to talk to their teacher, or to the **Special Educational Needs Coordinator** or the Headteacher.

If you think the educational setting is doing all it can but your child needs even more help, you can ask the local authority for an **EHC needs assessment**.

If your child has an **Education, Health and Care plan** you can also contact the Statutory Special Educational Needs Service.

Sendias Bathnes can help you prepare for and attend a meeting. If you still have concerns we can help you decide what to do next.

What next?

If you still have a problem you might be able to:

- seek some help to put your concerns forward
- make a complaint
- ask for independent disagreement resolution or mediation
- appeal against a decision.

Sendias Bathnes can tell you more about each of these and help you decide what to do.

Seeking help

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 educational setting has done and has told you.

Sendias Bathnes can give you impartial information and advice about possible ways forward.

Sendias Bathnes might also be able to offer you independent support, or tell you about local or national groups that provide information and advice.

Making a complaint

If you think that the school, college or Bath & North East Somerset could do more, you can complain using their complaints procedure. They will send you a form if you ask for it. You will usually 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
- give a reasonable time by which you would like a response.

If you are not happy with the outcome of making a complaint or feel that it has not been dealt with properly Sendias Bathnes can give you information on what to do next.

You can find out more about complaints procedures in the **SEND Code of Practice** sections 11.2 and 11.67 to 11.111. If you want help to understand the different procedures, or advice on which to use, please contact Sendias Bathnes

Disagreement resolution

Many disagreements can be sorted out by talking with the school, college, local authority, or, for health services, the Clinical Commissioning Group.

The **SEND Code of Practice** says:

Decisions about provision for children and young people with SEN should be made as soon as possible. In most cases this will be achieved by early years providers, schools, colleges, local authorities and clinical commissioning groups (CCGs) working closely together and agreeing what should be provided with parents and young people.

(11.3)

Sometimes it can be difficult to reach agreement. Sendias Bathnes can help you by providing impartial information, advice and support.

The **SEND Code of Practice** says:

Local authorities must make disagreement resolution services available to parents and young people. Use of the disagreement resolution services is voluntary and has to be with the agreement of all parties. The service, while commissioned by it, must be independent of the local authority – no-one who is directly employed by a local authority can provide disagreement resolution services.

(11.6)

Global Mediation is an independent service that 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.

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 Education, Health and Care plans. 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 EHC plans.
- health or social care provision when this part of an **EHC needs assessment**, while EHC plans are being drawn up, reviewed or when children or young people are being reassessed.

Disagreement resolution services can also be used:

- during EHC needs assessments
- while EHC plans are drawn up
- while waiting for Tribunal appeals

- at review
- during reassessments.

Sendias Bathnes or Global Mediation can help you decide if independent disagreement resolution is the right way forward.

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 EHC plan, after they receive a final EHC plan or amended plan, following a decision not to amend an EHC plan or a decision to cease to maintain an EHC plan.
(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.

Your 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 is one exception to this rule. You do not need to seek. 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.

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. Your time limit for appealing to the Tribunal is two months from the date of the decision you disagree with, or one month from the date of the mediation certificate, whichever is the later.

Mediators must be trained and accredited and are independent of the local authority and Clinical Commissioning Group.

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.

Sendias Bathnes or Global Mediation can help you decide if mediation is the right way forward.

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

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. Sendias Bathnes can explain your rights and the different procedures.

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 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*

(11.45)

You can find out more about appeals to the Tribunal in the **SEND Code of Practice** sections 11.39 to 11.55.

Sendias Bathnes can explain the appeal process to you and provide impartial advice and support.

You can also appeal against a school exclusion. You can find out more about school exclusion appeals from Sendias Bathnes

Where can I get more information, advice or support?

You can find out more about making a complaint about provision at your child's educational setting on its website or by asking about its complaint's procedure.

The **Local Offer**, published by the local authority, includes information about the arrangements for resolving disagreements and for mediation, and details about making complaints. It also tells you about your right to appeal to the Tribunal.

You can find the Local Offer at <https://livewell.bathnes.gov.uk/special-educational-need-or-disability-send>.

Chapter 11 of the **SEND Code of Practice** includes a lot more information about complaints procedures, disagreement resolution, mediation advice and mediation.

Sendias Bathnes can give you:

- information about complaints procedures, disagreement resolution and mediation
- advice about what to do if you are unhappy with the support the school or college is providing
- details of other organisations, support groups and information services that might help
- information and advice about your rights to appeal to the First Tier Tribunal (SEN and Disability)
- impartial advice and support through the process of making a complaint, disagreement resolution, mediation or appeal.

National organisations that can also provide information and advice on SEND include:

Coram Children's Legal Centre at www.childrenslegalcentre.com

Contact – for families with disabled children at www.contact.org.uk/

IPSEA at www.ipsea.org.uk

Useful webpages

Global Mediation

www.globalmediation.co.uk/service/special-educational-needs-disability/

SEND Code of Practice

www.gov.uk/government/publications/send-code-of-practice-0-to-25

Glossary

Education, Health and Care plan

An EHC plan describes the special educational needs that a child or young person has and the help that they will be given to meet them. It also includes the health and care provision that is needed. It is a legal document written by the local authority and is used for children and young people who have high support needs.

EHC needs assessment

Local authorities must carry out an EHC needs assessment if a child or young person may need an EHC plan. The assessment is a detailed look at the special educational needs that the child or young person has and what help he or she may need in order to learn.

It is sometimes called a statutory assessment.

You can find out more in the SEND Code of Practice sections 9.45 – 9.52.

First Tier Tribunal (SEN and disability)

The First-tier Tribunal (Special Educational Needs and Disability) is a legal body. The Tribunal hears appeals from parents of children with SEN, and young people with SEN, about EHC needs assessments and EHC plans.

You can find out more at www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability

Local Offer

The Local Offer, published by every local authority, tells you what support is available for children and young people with special educational needs and/or disabilities, and their families. It includes information about education, health and care provision. It also gives information about training, employment and independent living for young people with special educational needs and/or disabilities.

Mediation Advice

The purpose of mediation advice is to give information about what mediation involves. Parents or young people who wish to register an appeal with the First Tier Tribunal (SEN and Disability) must first seek mediation advice. The advice must be factual and unbiased. After mediation advice has been given the parent or young person can choose whether they wish to go to mediation.

However it is not necessary to seek mediation advice if the appeal is only about the name of the school, or college named on the plan, the type of provision specified in the plan or the fact that no school or other institution is named.

You can find more information on mediation advice in the SEND Code of Practice 11.21 to 11.25.

SEN support

SEN support includes any help for children and young people with SEN that is additional to or different from the support generally made for other children of the same age.

The purpose of SEN support is to help children achieve the outcomes or learning objectives that have been set for them by the school. Schools should involve parents in this process.

SEN support replaces Early Years Action/Action Plus and School Action/Action Plus.

SEND Code of Practice

This is the statutory guidance that supports Part 3 of the Children and Families Act 2014.

It tells local authorities, early years settings, schools, colleges, health and social care providers and others what they must and should do to identify, assess and provide for children and young people with SEN or disabilities.

You can download a full copy of the Code at www.gov.uk/government/publications/send-code-of-practice-0-to-25

You can download a shorter version for parents at www.gov.uk/government/publications/send-guide-for-parents-and-carers

Special Educational Needs Coordinator (SENCO)

A SENCO is a qualified teacher in a school or maintained nursery school who has responsibility for co-ordinating SEN provision.

Early years settings that are part of group provision arrangements are expected to identify an individual to perform the role of SENCO.

We have made all reasonable efforts to ensure that the information contained in this leaflet is accurate and up to date at the time of publication. It does not constitute legal advice and Sendias Bathnes cannot accept any responsibility for any loss or damage suffered as a consequence of any reliance placed upon it.

This document can be made available in a range of community languages, large print, Braille, on tape, electronic and accessible formats.

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