

## **Mediation in the EHC Pathway**

The 'Special Educational Needs and Disability Code of Practice 0-25' puts parents, children and young people at the centre of decision making about what they want to achieve and what they require to meet their needs. It is important that communication is clear and open so you can understand how to make your views known and what to do if agreement cannot be reached.

We would always hope that opportunities would be taken to resolve any differences informally by working with you throughout the process and being available to discuss any issues as they arise. In the first instance, please contact the SEND Officer named on the letters you have received from us.

Additional information, advice and support is also available from Wigan Special Educational Needs Disability Information Advice and Support Service (SENDIASS), whose contact details are as follows:

**SENDIASS Manager**  
**Telephone: 01942 233323**

### **SEND Disagreement Resolution and Mediation Services**

There are more formal arrangements in place should issues remain unresolved. Parents and young people (over the age of 16), who can make their own decisions, can access these services which are free of charge, if they wish.

Disagreement Resolution and Mediation services are available if this is the case. The terms "disagreement resolution" and "mediation" services are often used interchangeably, but under the Children and Families Act (2014) they have different meanings.

#### **Disagreement Resolution**

Disagreement resolution is intended for young people or parents of children with special educational needs or disabilities, whether or not they have an Education Health Care (EHC) Plan. It allows everyone to come together to discuss matters and explore possible solutions. Both parties come to the meeting voluntarily with a view to reaching an amicable agreement.

## **Mediation**

Mediation is a process led by a Mediation Adviser who will support parents and young people in seeking further opportunities to reach agreement. In most circumstances parents and young people must contact the Mediation Adviser before appealing to the First-Tier Tribunal - Special Educational Needs and Disability, sometimes referred to as the SEND Tribunal.

### **Mediation Adviser**

Should you wish to pursue mediation please contact the Local Authority (there will be contact details of your named officer in the Local Authority's decision letter) or SENDIASS.

If issues remain unresolved, then you should contact the Mediation Adviser. This service is provided through Embrace Wigan and Leigh, Platt Bridge Community Zone, 81 Ribble Road, Platt Bridge, Wigan WN2 5EG Tel. 01942-233323.

### **When does mediation apply?**

Mediation happens when a child's parent or a young person intends to appeal to the First-tier Tribunal (SEND) about a decision made by the Local Authority in respect of EHC Needs assessments and the content of an EHC Plan.

If you wish to appeal you **must** consider mediation before you register an appeal with the tribunal.

### **If you only want to appeal about:**

- The school or other institution named in the plan
- The type of school or other institution specified in the plan, or
- The fact that the plan does not name a school or other institution

**you do not have to contact the mediation adviser.** You can appeal directly to the Tribunal. See details below.

### **What can be discussed during mediation?**

Matters which can be discussed in mediation before going to Tribunal include:

- The Local Authority's decision not to carry out an EHC assessment
- The Local Authority's decision not to issue an EHC plan following an assessment
- The description of the young persons or child's special educational needs as described in Section B of the EHC Plan
- The special educational provision described in Section I of the EHC Plan
- The Local Authority's decision to cease to maintain an EHC Plan

You will also be able to go to mediation about the health and social care elements of an EHC plan. See details below regarding Tribunal's extended powers.

### **What happens once you have contacted the mediation adviser?**

Following a discussion with the mediation adviser you can then decide whether mediation is a suitable way forward.

If you do not wish to participate in mediation you must obtain a certificate from a mediation adviser. The certificate will be issued within 3 working days of informing the mediator of your decision. This certificate can then be sent to Tribunal to register an appeal.

If you do decide to proceed with mediation, then you will need to inform the Local Authority who will arrange mediation within 30 calendar days at a neutral, accessible venue. You should identify what you wish to pursue mediation about (the mediation issues including any healthcare provision).

Any agreements reached during the meeting will be recorded and signed by both parties. The mediator will then produce a certificate within 3 working days of the mediation taking place, regardless of the outcome.

If the mediation does not fully resolve the disagreement and you still wish to appeal to the Tribunal, the certificate must be sent to register the appeal within one month of receiving the certificate or within two months of receiving the original decision letter from the local authority, whichever is the later. Going to mediation does not affect your right, subsequently, to appeal to the Tribunal.

### **Tribunal's Extended Powers**

The Government are extending the powers of the First-tier Tribunal (SEND) to make non-binding recommendations about health and social care aspects of EHC Plans as part of a two-year trial. The trial will apply to decisions made or EHC plans issued or amended from 3 April 2018.

To date, you have only been able to appeal the educational aspects of EHC plans. The trial gives you new rights to request recommendations about the health and social care needs and provision specified in EHC plans, in addition to the educational aspects, when making a SEND appeal.

It is only possible for the Tribunal to consider the health and /or social care aspects of the EHC plan where you are already making an appeal in relation to the education aspects of the EHC plan and the education aspects must remain live throughout the appeal.

You can ask the Tribunal to make non-binding recommendations on health and/or social care aspects of EHC plans as part of an appeal except Refusal to Assess.

You will find further information and advice regarding the extended right to appeal in Wigan's Local Offer.

### **Appealing to the Tribunal**

If you are not required to contact the Mediation Adviser, because of the reason for your appeal as explained above, you can get further information in the booklet 'Special Educational Needs: How to appeal' which is available from:

SENDIST, 1<sup>st</sup> Floor, Darlington Magistrates' Court,  
Parkgate, Darlington, DL1 1RU.

Tel: 01325 289350.

E-mail: [sendistqueries@hmcts.gsi.gov.uk](mailto:sendistqueries@hmcts.gsi.gov.uk)

Website: [www.sendist.gov.uk](http://www.sendist.gov.uk).

### **Finally**

The Local Authority is always willing to discuss any issues or concerns you may have at any point in the process. Please contact your SEND named officer who will be happy to help you.