



# Children and Families Act 2014

## 2014 CHAPTER 6

### PART 3

#### CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS OR DISABILITIES

##### *Appeals, mediation and dispute resolution*

## 51 Appeals

- (1) A child's parent or a young person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 55 (mediation).
- (2) The matters are—
  - (a) a decision of a local authority not to secure an EHC needs assessment for the child or young person;
  - (b) a decision of a local authority, following an EHC needs assessment, that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan;
  - (c) where an EHC plan is maintained for the child or young person—
    - (i) the child's or young person's special educational needs as specified in the plan;
    - (ii) the special educational provision specified in the plan;
    - (iii) the school or other institution named in the plan, or the type of school or other institution specified in the plan;
    - (iv) if no school or other institution is named in the plan, that fact;
  - (d) a decision of a local authority not to secure a re-assessment of the needs of the child or young person under section 44 following a request to do so;
  - (e) a decision of a local authority not to secure the amendment or replacement of an EHC plan it maintains for the child or young person following a review or re-assessment under section 44;

- (f) a decision of a local authority under section 45 to cease to maintain an EHC plan for the child or young person.
- (3) A child’s parent or a young person may appeal to the First-tier Tribunal under subsection (2)(c)—
  - (a) when an EHC plan is first finalised for the child or young person, and
  - (b) following an amendment or replacement of the plan.
- (4) Regulations may make provision about appeals to the First-tier Tribunal in respect of EHC needs assessments and EHC plans, in particular about—
  - (a) other matters relating to EHC plans against which appeals may be brought;
  - (b) making and determining appeals;
  - (c) the powers of the First-tier Tribunal on determining an appeal;
  - (d) unopposed appeals.
- (5) Regulations under subsection (4)(c) may include provision conferring power on the First-tier Tribunal, on determining an appeal against a matter, to make recommendations in respect of other matters (including matters against which no appeal may be brought).
- (6) A person commits an offence if without reasonable excuse that person fails to comply with any requirement—
  - (a) in respect of the discovery or inspection of documents, or
  - (b) to attend to give evidence and produce documents,
 where that requirement is imposed by Tribunal Procedure Rules in relation to an appeal under this section or regulations under subsection (4)(a).
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **52 Right to mediation**

- (1) This section applies where—
  - (a) a decision against which an appeal may be brought under section 51 is made in respect of a child or young person, or
  - (b) an EHC plan for a child or young person is made, amended or replaced.
- (2) Before the end of the prescribed period after the decision is made, or the plan is made, amended or replaced, the local authority must notify the child’s parent or the young person of—
  - (a) the right to mediation under section 53 or 54, and
  - (b) the requirement to obtain a certificate under section 55 before making certain appeals.
- (3) If the parent or young person wishes to pursue mediation under section 53 or 54, he or she must inform the local authority of—
  - (a) that fact, and
  - (b) the issues in respect of which he or she wishes to pursue mediation (“the mediation issues”).
- (4) If the mediation issues are, or include, the fact that no health care provision, or no health care provision of a particular kind, is specified in the plan, the parent or young

person must also inform the local authority of the health care provision which he or she wishes to be specified in the plan.

### **53 Mediation: health care issues**

- (1) This section applies where—
  - (a) the parent or young person informs the local authority under section 52 that he or she wishes to pursue mediation, and
  - (b) the mediation issues include health care provision specified in the plan or the fact that no health care provision, or no health care provision of a particular kind, is specified in the plan.
- (2) The local authority must notify each relevant commissioning body of—
  - (a) the mediation issues, and
  - (b) anything of which it has been informed by the parent or young person under section 52(4).
- (3) If the mediation issues are limited to the health care provision specified in the plan or the fact that no health care provision, or no health care provision of a particular kind, is specified in the plan, the responsible commissioning body (or, where there is more than one, the responsible commissioning bodies acting jointly) must—
  - (a) arrange for mediation between it (or them) and the parent or young person,
  - (b) ensure that the mediation is conducted by an independent person, and
  - (c) participate in the mediation.
- (4) If the mediation issues include anything else—
  - (a) the local authority must—
    - (i) arrange for mediation between it, each responsible commissioning body and the parent or young person,
    - (ii) ensure that the mediation is conducted by an independent person, and
    - (iii) participate in the mediation, and
  - (b) each responsible commissioning body must also participate in the mediation.
- (5) For the purposes of this section, a person is not independent if he or she is employed by any of the following—
  - (a) a local authority in England;
  - (b) a clinical commissioning group;
  - (c) the National Health Service Commissioning Board.
- (6) In this section “responsible commissioning body”—
  - (a) if the mediation issues in question are or include the health care provision specified in an EHC plan, means a body that is under a duty to arrange health care provision of that kind in respect of the child or young person;
  - (b) if the mediation issues in question are or include the fact that no health care provision, or no health care provision of a particular kind, is specified in an EHC plan, means a body that would be under a duty to arrange health care provision of the kind in question if it were specified in the plan.

### **54 Mediation: educational and social care issues etc**

- (1) This section applies where—

- (a) the parent or young person informs the local authority under section 52 that he or she wishes to pursue mediation, and
  - (b) the mediation issues do not include health care provision specified in the plan or the fact that no health care provision, or no health care provision of a particular kind, is specified in the plan.
- (2) The local authority must—
- (a) arrange for mediation between it and the parent or young person,
  - (b) ensure that the mediation is conducted by an independent person, and
  - (c) participate in the mediation.
- (3) For the purposes of this section, a person is not independent if he or she is employed by a local authority in England.

## **55 Mediation**

- (1) This section applies where a child’s parent or young person intends to appeal to the First-tier Tribunal under section 51 or regulations made under that section in respect of—
- (a) a decision of a local authority, or
  - (b) the content of an EHC plan maintained by a local authority.
- (2) But this section does not apply in respect of an appeal concerning only—
- (a) the school or other institution named in an EHC plan;
  - (b) the type of school or other institution specified in an EHC plan;
  - (c) the fact that an EHC plan does not name a school or other institution.
- (3) The parent or young person may make the appeal only if a mediation adviser has issued a certificate to him or her under subsection (4) or (5).
- (4) A mediation adviser must issue a certificate under this subsection to the parent or young person if—
- (a) the adviser has provided him or her with information and advice about pursuing mediation under section 53 or 54, and
  - (b) the parent or young person has informed the adviser that he or she does not wish to pursue mediation.
- (5) A mediation adviser must issue a certificate under this subsection to the parent or young person if the adviser has provided him or her with information and advice about pursuing mediation under section 53 or 54, and the parent or young person has—
- (a) informed the adviser that he or she wishes to pursue mediation under the appropriate section, and
  - (b) participated in such mediation.

## **56 Mediation: supplementary**

- (1) Regulations may make provision for the purposes of sections 52 to 55, in particular—
- (a) about giving notice;
  - (b) imposing time limits;
  - (c) enabling a local authority or commissioning body to take prescribed steps following the conclusion of mediation;

- (d) about who may attend mediation;
  - (e) where a child’s parent is a party to mediation, requiring the mediator to take reasonable steps to ascertain the views of the child;
  - (f) about the provision of advocacy and other support services for the parent or young person;
  - (g) requiring a local authority or commissioning body to pay reasonable travel expenses and other expenses of a prescribed description, up to any prescribed limit;
  - (h) about exceptions to the requirement in section 55(3);
  - (i) about the training, qualifications and experience of mediators and mediation advisers;
  - (j) conferring powers or imposing requirements on local authorities, commissioning bodies, mediators and mediation advisers.
- (2) In section 55 and this section “mediation adviser” means an independent person who can provide information and advice about pursuing mediation.
- (3) For the purposes of subsection (2), a person is not independent if he or she is employed by any of the following—
- (a) a local authority in England;
  - (b) a clinical commissioning group;
  - (c) the National Health Service Commissioning Board.
- (4) In this section “commissioning body” means a body that is under a duty to arrange health care provision of any kind.

## 57 Resolution of disagreements

- (1) A local authority in England must make arrangements with a view to avoiding or resolving disagreements within subsection (2) or (3).
- (2) The disagreements within this subsection are those about the exercise by the local authority or relevant bodies of their functions under this Part, where the disagreement is between—
- (a) the local authority or a relevant body, and
  - (b) the parents of children, and young people, in the authority’s area.
- (3) The disagreements within this subsection are those about the exercise by the local authority of its functions relating to EHC needs assessments, the preparation and review of EHC plans, and re-assessment of educational, health care and social care needs, where the disagreement is between—
- (a) the local authority and a responsible commissioning body, or
  - (b) a responsible commissioning body and the parents of children, or young people, in the authority’s area.
- (4) A local authority in England must make arrangements with a view to avoiding or resolving, in each relevant school or post-16 institution, disagreements within subsection (5).
- (5) The disagreements within this subsection are those about the special educational provision made for a child or young person with special educational needs who is a registered pupil or a student at the relevant school or post-16 institution concerned, where the disagreement is between—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the child’s parent, or the young person, and
  - (b) the appropriate authority for the school or post-16 institution.
- (6) Arrangements within this section must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of the disagreements to which the arrangements apply.
- (7) For the purposes of subsection (6) a person is not independent if he or she is employed by any of the following—
- (a) a local authority in England;
  - (b) a clinical commissioning group;
  - (c) the National Health Service Commissioning Board.
- (8) A local authority in England must take such steps as it thinks appropriate for making the arrangements under this section known to—
- (a) the parents of children in its area with special educational needs,
  - (b) young people in its area with special educational needs, and
  - (c) the head teachers, governing bodies, proprietors and principals of schools and post-16 institutions in its area.
- (9) A local authority in England may take such steps as it thinks appropriate for making the arrangements under this section known to such other persons as it thinks appropriate.
- (10) In this section—
- “relevant body” means—
    - (a) the governing body of a maintained school, maintained nursery school or institution within the further education sector;
    - (b) the proprietor of an Academy;
  - “relevant school or post-16 institution” means—
    - (a) a maintained school;
    - (b) a maintained nursery school;
    - (c) a post-16 institution;
    - (d) an Academy;
    - (e) an independent school;
    - (f) a non-maintained special school;
    - (g) a pupil referral unit;
    - (h) a place at which relevant early years education is provided;
  - “responsible commissioning body”, in relation to any particular health care provision, means a body that is under a duty to arrange health care provision of that kind in respect of the child or young person concerned.
- (11) For the purposes of this section, the “appropriate authority” for a relevant school or post-16 institution is—
- (a) in the case of a maintained school, maintained nursery school or non-maintained special school, the governing body;
  - (b) in the case of a post-16 institution, the governing body, proprietor or principal;
  - (c) in the case of an Academy or independent school, the proprietor;
  - (d) in the case of a pupil referral unit, the management committee;
  - (e) in the case of a place at which relevant early years education is provided, the provider of the relevant early years education.

## **58 Appeals and claims by children: pilot schemes**

- (1) The Secretary of State may by order make pilot schemes enabling children in England to—
  - (a) appeal to the First-tier Tribunal under section 51;
  - (b) make a claim to the First-tier Tribunal under Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement) that a responsible body in England has contravened Chapter 1 of Part 6 of that Act because of the child’s disability.
- (2) An order under subsection (1) may, in particular, make provision—
  - (a) about the age from which children may appeal or make a claim;
  - (b) in respect of appeals under section 51, about mediation and the application of section 55;
  - (c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently;
  - (d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to be able to do so;
  - (e) enabling a person to exercise a child’s rights under an order under subsection (1) on behalf of the child;
  - (f) enabling children to have access to advice and information which is available to a parent or young person in respect of an appeal or claim of a kind mentioned in subsection (1);
  - (g) about the provision of advocacy and other support services to children;
  - (h) requiring notices to be given to a child (as well as to his or her parent);
  - (i) requiring documents to be served on a child (as well as on his or her parent).
- (3) An order under subsection (1) may apply a statutory provision, with or without modifications.
- (4) In subsection (3), “statutory provision” means a provision made by or under this or any other Act, whenever passed or made.
- (5) This section is repealed at the end of five years beginning with the day on which this Act is passed.

## **59 Appeals and claims by children: follow-up provision**

- (1) The Secretary of State may by order provide that children in England may—
  - (a) appeal to the First-tier Tribunal under section 51;
  - (b) make a claim to the First-tier Tribunal under Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement) that a responsible body in England has contravened Chapter 1 of Part 6 of that Act because of the child’s disability.
- (2) The Secretary of State may not make an order under subsection (1) until the end of two years beginning with the day on which the first order is made under section 58(1).
- (3) An order under subsection (1) may, in particular, make provision—
  - (a) about the age from which children may appeal or make a claim;
  - (b) in respect of appeals under section 51, about mediation and the application of section 55;
  - (c) about the bringing of appeals or making of claims by a child and by his or her parent concurrently;

- (d) about determining whether a child is capable of bringing an appeal or making a claim, and the assistance and support a child may require to be able to do so;
  - (e) enabling a person to exercise a child's rights under an order under subsection (1) on behalf of the child;
  - (f) enabling children to have access to advice and information which is available to a parent or young person in respect of an appeal or claim of a kind mentioned in subsection (1);
  - (g) about the provision of advocacy and other support services to children;
  - (h) requiring notices to be given to a child (as well as to his or her parent);
  - (i) requiring documents to be served on a child (as well as on his or her parent).
- (4) An order under subsection (1) may—
- (a) amend, repeal or revoke a statutory provision, or
  - (b) apply a statutory provision, with or without modifications.
- (5) In subsection (4), “statutory provision” means a provision made by or under this or any other Act, whenever passed or made.

## **60 Equality Act 2010: claims against schools by disabled young people**

In Part 2 of Schedule 17 to the Equality Act 2010 (disabled pupils: enforcement in tribunals in England and Wales), in paragraph 3 (who may make a claim that a school has contravened Chapter 1 of Part 6 of that Act because of a person's disability) for “to the Tribunal by the person's parent” substitute “—

- (a) to the English Tribunal by the person's parent or, if the person is over compulsory school age, the person;
- (b) to the Welsh Tribunal by the person's parent.”