DISAGREEING WITH PORTSMOUTH CITY COUNCIL & OTHERS REGARDING CHILDREN AND YOUNG PEOPLE'S SPECIAL EDUCATIONAL NEEDS AND DISABILITIES

Portsmouth City Council won't always agree with parent or young people's wishes for how their education, health & care arrangements are dealt with. Portsmouth City Council believes in talking openly and honestly with families, especially when they have concerns, or they want to make a complaint. Parents and young people should raise concerns or complaints as early as possible. It is usually possible to resolve concerns and complaints informally.

Parents and young people need to know who to raise their concerns or complaints with, and understand that concerns and complaints must be dealt with at the right level first before it can go to a more senior member of staff or to a higher level or another organisation.

Usually, concerns or complaints will be raised with professionals in the following order:

- **About the educational setting** - through the schools' complaints procedure usually beginning with the teacher, or if the complaint is about the teacher, then the teacher's manager, through to more senior staff including the SENCO, Head Teacher, the Chair of Governors, the local authority, Ofsted and the Local Government Ombudsman;
- **About the local authority** - through the local authority's complaints procedure (www.portsmouth.gov.uk) usually beginning with the practitioner or, if the complaint is about the practitioner, then the practitioner's manager, the Head of Service, the Chief Executive, Ofsted and the Local Government Ombudsman;
- **About the Health Service** - through the NHS complaints procedure (www.nhs.uk) usually beginning with the practitioner or, if the complaint is about the practitioner, then the practitioner's manager.

Information, Advice & Support

At different points of a child or young person's education, or when considering or involved with the Education, Health & Care (EHC) Needs Assessment processes, children, young people and parents have the right to ask for information, advice and support from the main organisations they are dealing with or to make complaints about them, including:

- Asking to meet with SEN Managers
- Asking for independent information, advice and support
- Asking for disagreement resolution
- Asking for mediation
- Appealing to the First Tier Tribunal, Special Educational Needs & Disability or making a Disability Discrimination Claim
- Complaining to the Local Government Ombudsman
- Complaining to Ofsted - the Office for Standards in Education

Parents and young people can contact Portsmouth City Council's Special Educational Needs Team during office hours with any questions:

💻: www.portsmouth.gov.uk

✉: sen.education@portsmouthcc.gov.uk

☎: 023 9284 1238

📠: SEN Team, Children, Families & Education, Civic Offices, Guildhall Square, Portsmouth PO1 2EA

Independent Information, Advice and Support Service

All parents and young people in Portsmouth can access Portsmouth SEND Information Advice & Support Service (formerly Portsmouth Parent Partnership Service) if they have questions about the EHC processes, or if they have concerns or complaints about how Portsmouth City Council or the NHS trust is managing the EHC process. Portsmouth City Council makes this available through the Independent Information, Advice & Support Service managed and delivered by the Portsmouth Disability Forum, and independent charity:

💻: www.barnardossendiass.org.uk/portsmouth-sendiass

✉: PortsmouthSENDIASS@barnardos.org.uk

☎: 023 9323 3656

Disagreement Resolution

Parents and young people can also access informal support in resolving disagreements through the local impartial Information, Advice and Support Service. In addition, though, 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.

Disagreement resolution arrangements cover all children and young people with SEN, not just those who are being assessed for or have an EHC plan, and a range of disagreements. The disagreement resolution arrangements are designed to resolve disagreements about the performance of duties, SEN provision, disagreements over health and social care provision and disagreements between health commissioners and local authorities and are voluntary for both parties.

They are available to parents and young people to resolve disagreements about any aspect of SEN provision, and health and social care disagreements during the processes related to EHC needs assessments and EHC plans. They can provide a quick and non-adversarial way of resolving disagreements. Used early in the process of EHC needs assessment and EHC plan development they can prevent the need for mediation, once decisions have been taken in that process, and appeals to the Tribunal.

Portsmouth City Council makes its Disagreement Resolution arrangements through GLOBAL MEDIATION:

💻: www.globalmediation.co.uk

✉: info@globalmediation.co.uk

☎: 0208 441 1355

🖃: GLOBAL MEDIATION LTD, Molteno House, 302 Regents Park Road, Finchley, N3 2JX

Mediation

If parents or 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.

These mediation arrangements complement the disagreement resolution arrangements set out above. The mediation arrangements are specifically linked to decisions about EHC needs assessments and plans. Disagreement resolution services can be used at any time, if both parties agree, including while an EHC needs assessment is being conducted, while the plan is being drawn up, after the plan is finalised or while an appeal is going through the Tribunal process.

Parents and young people who wish to make an appeal to the Tribunal may do so **only** after they have contacted an independent mediation adviser and discussed whether mediation might be a suitable way of resolving the disagreement. Parents or young people have a right to go to mediation and they **must** contact a mediation adviser before registering an appeal with the Tribunal. After discussing mediation with the provider, parents and young people will be issued with a certificate which must be provided to the First Tier Tribunal before any appeal can be made.

Parents and young people have two months from the date of the local authority letter giving notice of a decision which can be appealed to request mediation. There is a requirement for parents and young people to inform the local authority (SEN Team) that they wish to pursue mediation, explain what the mediation issues are and if the issues relate to health care provision.

Portsmouth City Council makes its Mediation arrangements through GLOBAL MEDIATION:

💻: www.globalmediation.co.uk

✉: info@globalmediation.co.uk

☎: 0208 441 1355

🖃: GLOBAL MEDIATION LTD, Molteno House, 302 Regents Park Road, Finchley, N3 2JX

Appealing to H.M. Courts First Tier Tribunal - Special Educational Needs & Disability

Parents and young people have **two months to register an SEND appeal with the Tribunal, from the date of the local authority letter giving notice of a decision which can be appealed**, or one month from the date of a certificate which has been issued following mediation or the parent or young person being given mediation information, whichever is the later.

The Tribunal will not take account of the fact that mediation has taken place, or has not been taken up, nor will it take into account the outcome of any mediation. Parents and young people will not be disadvantaged at the Tribunal because they have chosen not to go to mediation.

Parent and young people can contact the First Tier Tribunal (SEND Tribunal) in the following ways:

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

☎: 0300 303 5857

✉: send@justice.gov.uk

🖃: Special Educational Needs & Disability Tribunal, 1st Floor, Darlington Magistrates Court, Parkgate, Darlington DL1 1ZD

Single Route of Redress – Extended Appeals

Following a National Trial, the Government have extended the powers of the First-tier Tribunal (SEND), to make non-binding recommendations about the health and social care aspects of Education, Health and Care (EHC) plans.

The Extended Appeals give the right 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. This gives you the opportunity to raise all your concerns about an EHC plan in one place.

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 aspect must remain live throughout the appeal.

What does this mean for parents and young people?

If you are unhappy with a decision not to issue an EHC plan, or with the special educational content or placement in the plan, you can make an appeal to the SEND Tribunal. You also have the opportunity to also request recommendations about the health and social care content of the plan at the same time. This will mean the Tribunal will take a more holistic, person-centred view of the needs of the child or young person. An Extended Appeal is not available for an appeal against a decision not to carry out an EHC Needs Assessment.

This does not prevent you also complaining about other aspects of your disagreement through other complaint procedures. You should seek advice about the different routes available, including from your local Information Advice and Support Service (IASS).

If the SEND Tribunal makes a recommendation about health or social care elements of an EHC plan, the local authority and/or health commissioner is generally expected to follow such recommendations, but they are not legally binding. Where they are not followed, the reasons for not following them must be explained and set-out in writing to you and to the Department for Education through the evaluators. If they are not followed, you can complain to the Local Government and Social Care Ombudsman (LGSCO) or Parliamentary and Health Service Ombudsman (PHSO) or seek to have the decision judicially reviewed. Further information on the roles of these bodies can be found on their websites.

When can a parent or young person request recommendations about the health and social care elements of an EHC plan?

You can request the Tribunal makes recommendations about the health and/or social care aspects of EHC plans **as part of an appeal** relating to:

- the description of the child/young person's special educational needs in an EHC plan
- the special educational provision specified in an EHC plan
- the school or other educational institution named in an EHC plan
- a decision by the local authority not to issue an EHC plan
- a decision by the local authority not to carry out a re-assessment for a child/young
- person who has an EHC plan
- a decision by the local authority not to amend an EHC plan following a review or
- re-assessment
- a decision by the local authority to cease to maintain an EHC plan

It also places responsibility on health and social care commissioners to:

1. Respond to any request for information and evidence within the timeframe set by the Tribunal
2. Send a witness to attend the hearing as required
3. Respond to the parent/young person and the LA SEND team within 5 weeks of a recommendation being made, setting out the steps they have decided to take or giving reasons why they are not going to follow the recommendation.

How can a parent or young person request a health or social care recommendation?

If you wish to appeal against a local authority decision on any of the grounds above and want to request that the Tribunal considers your concerns about the health and /or social care aspects of the EHC plan, you should **follow the normal process for bringing an appeal to the Tribunal and tick the box on the form relating to a health and/or social care appeal**. Advice on making SEND appeals to the Tribunal and the appeal form is available on the GOV.UK website (https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability).

As a parent or young person, do I have to consider mediation?

Before you can register an appeal with the Tribunal, you must contact a mediation adviser within two months of the LA decision you wish to appeal and consider whether mediation might be a way to resolve your disagreement with the LA. If you want to appeal only about the school or other institution named in the EHC plan you do not have to contact a mediation adviser.

You can go to mediation about the health and social care elements of an EHC plan, but this is not compulsory. You can request recommendations about health and social care issues without having to receive mediation advice or attend mediation about those issues, provided there is also an education issue about which you are appealing.

Once a mediation adviser has been contacted, or once you have taken part in mediation, you will be issued with a certificate. This will be necessary if you are still unhappy and wish to progress to an appeal with the Tribunal. An appeal to the Tribunal must usually be made within two months of the decision about which the appeal is being made or one month following the issuing of the mediation certificate, whichever is the later.

If mediation resolves the educational issues, you will not be able to appeal to the Tribunal on any health and/or social care aspects of the EHC plan. However, mediation provides an opportunity for us to resolve disagreements and it can be completed more quickly than an appeal. It does not affect your right to make an educational appeal, and some aspects of the disagreement can go to appeal even when other aspects are resolved.

Help and further information

- Portsmouth SEND Information Advice & Support Service (💻: www.barnardossendiass.org.uk/portsmouth-sendiass, ✉: PortsmouthSENDIASS@barnardos.org.uk, ☎: 023 9323 3656)

Local Government and Social Care Ombudsman

The Local Government and Social Care Ombudsman looks at complaints about councils and some other authorities and organisations including education admissions appeal panels, and adult social care providers (such as care homes and home care providers). It is a free service and its job is to investigate complaints in a fair and independent way - it does not take sides.

💻: www.lgo.org.uk

✉: via the web, embedded complaint form

☎: 0300 061 0614

📪: The Local Government Ombudsman, PO Box 4771, Coventry CV40EH

Ofsted - The Office for Standards in Education

Ofsted is an education and childcare inspection body, and has some powers to investigate parental and young people's complaints about services which it inspects or regulates including maintained (council controlled) schools; academies; free schools; residential special schools; independent schools; further education and sixth-form colleges; work based training providers; local authority children's services; children & families services; early years and childcare.

💻: www.ofsted.gov.uk/onlinecomplaints

✉: via the web, embedded complaint form

☎: 0300 123 4666 (General Helpline)