Introduction to SEND Legal Challenge

SE19 SEND Legal Training

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Part 1 – Tribunal Appeals

What is the SEND Tribunal?

- The First-tier Tribunal (Special Educational Needs and Disability) a.k.a the SEND Tribunal
- Independent judicial body - hears legal disputes about special educational needs and disability.
- Role is to resolve disagreements between:
  - Parents and local authorities
  - Young people (aged 16*-25) and local authorities
  - Parents or young people and schools (in disability discrimination cases)
- The Tribunal sits within the Health, Education and Social Care Chamber; designed to provide an accessible and relatively informal alternative to court proceedings.
- Appeals regarding EHC Plans fall into two broad categories:
  - Section B, F, and/or I appeals
  - 'Extended appeals' – extended jurisdiction; differing legal effects to determinations made re: education vs health & S.C.
- Panel composition – who decides?

Context

- Around **29,000 SEND appeals were registered** in year ending March 2026.
- Around **20,000 appeals were disposed** of.
- The rise in appeals has been attributed to:
  - The continuing impact of the **2014 SEND reforms** and the introduction of EHCPs.
  - The Tribunal's **extended powers** to make recommendations on health and social care.
  - Growth in **EHC needs assessment requests** and the number of children and young people with EHCPs.
  - The most common appeal types were:
    - **61%** relating to the contents of an EHCP.
    - **24%** challenging a refusal to carry out an EHC needs assessment.

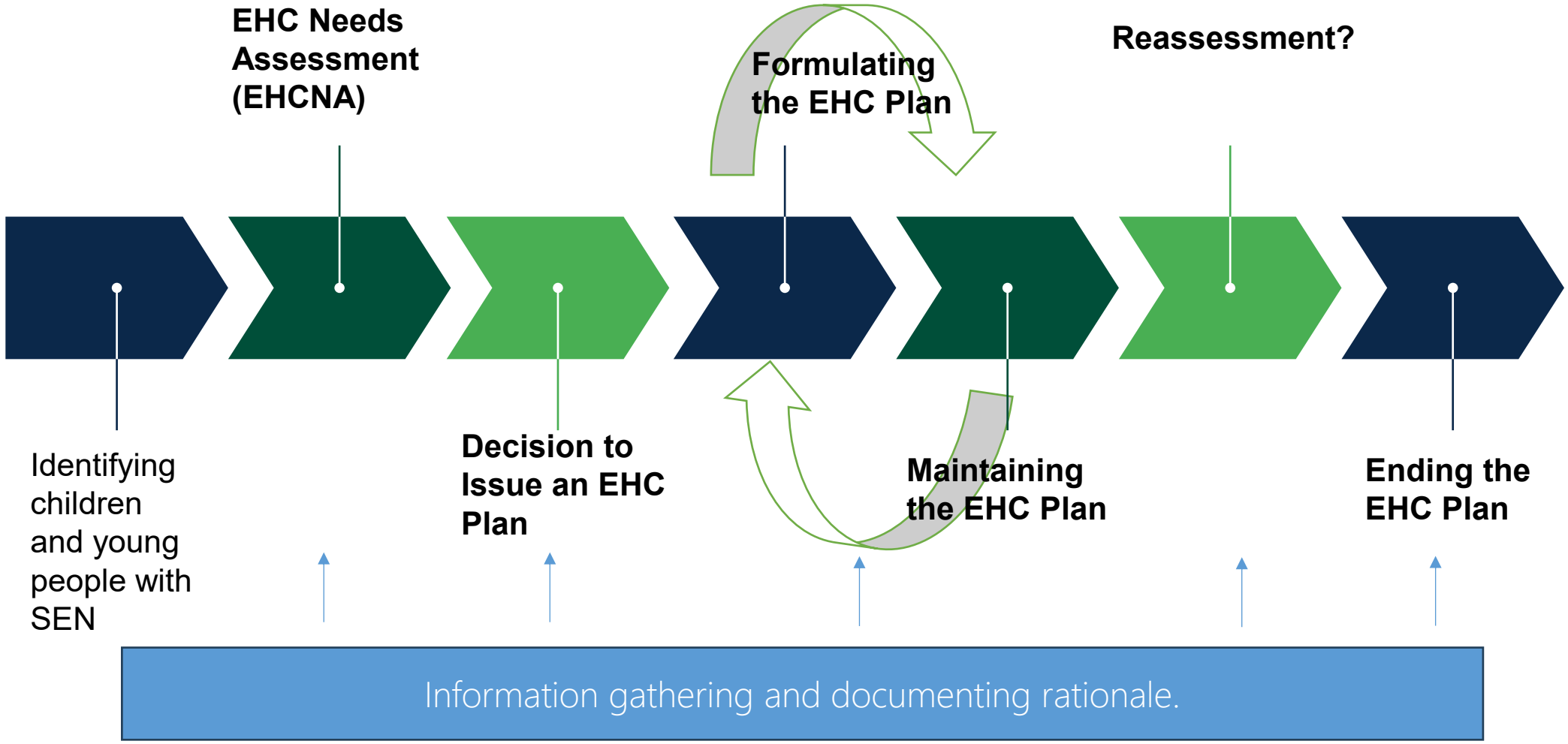
Tribunal Statistics Quarterly: January to March 2026 - GOV.UK

Recent Case Law

Case	Key Issue	Principle Established	Practical Lesson
EM v Royal Borough of Windsor & Maidenhead [2024] UKUT 317 (AAC)	Cease to maintain (Necessity of an EHCP)	Limited educational progress does not necessarily mean an EHCP is no longer required.	Focus on whether the Plan remains necessary, not academic attainment alone.
London Borough of Hillingdon v AP & SP [2024] UKUT 388 (AAC)	Residential placements	Correct approach is needs → provision → placement.	Establish need first before debating placement or cost.
DWL v Milton Keynes City Council [2026] UKUT 203 (AAC)	Refusal to Issue	Whether an EHC Plan is/not "necessary" is not confined to a child's current educational circumstances. Evidence concerning the practical delivery of provision in school is highly relevant to the necessity test.	R-to-I appeal may succeed where procedural unfairness or a failure properly to consider relevant evidence affects the tribunal's decision. Must consider **anticipated needs**, including transition to a new placement placement.
AM and SP v Wokingham Borough Council (SEN) [2026] UKUT 327 (AAC) (FtT: 19 December 2024)	EOTIS	EOTIS is not a question of 'all or nothing'.	If some of the provision cannot be appropriately made in a school, then EOTIS can apply in respect of that provision.
LVN, R (on the application of) v London Borough of Southwark [2026] EWHC 2254 (Admin)	Section 19 EA 1996, Section 42 CFA 2014	If S.19 EA 'other' relevant, LA will only have a duty to put in place suitable alternative education if education on offer is not reasonably practicable for the child. Section 42 CFA 2014 continues to apply even if a school has a duty under section 43 CFA 2014 and breaches it	

What role does the Tribunal play in resolving SEND disputes?

When can an EHC Plan appeal arise?



Primary grounds of appeal summarised in HM Courts & Tribunals Service Guidance Note (SEND37); Statutory rights are contained within S.51 Children and Families Act 2014

What decisions can the Tribunal be asked to consider?

Anything within the list at Section 51(2) Children and Families Act 2014

- 'Refusal to assess'
- 'Refusal to issue'
- 'Refusal to reassess'
- A decision to 'cease to maintain'
- The contents of the EHC Plan
  - Section B
  - Section F
  - Section I – Name/Type of setting/The fact that no setting is named.

What is the process ? – Lodging the appeal

- The deadline for making appeals is two months **from the date of the letter** from the local authority giving their final written decision.
  - Parents must formally seek to appeal so that the appeal is received by SEND Tribunal within two months of the date of that letter.
  - If the circumstances are exceptional families can apply to extend the time.
  - In most cases there should be *consideration of* mediation before an appeal.

- Mediation Certificate
  - Mediation is pre-requisite for bringing an appeal (except 'Section I only' appeals)
  - Two months to seek mediation advice (whether or not mediation is then pursued).
  - Mediation Certificate can extend a family's deadline for making an appeal by an additional 30 days (deadline is the **later of** two months or one month from the date of certificate).

More on mediation (and ongoing negotiation (Working Document) later…)

What about extended appeals?

- The Tribunal can also consider issues concerning a child or young person's health or social care needs (and provision required to meet those needs).

- Health and/or Social Care issues within an EHC Plan are ancillary grounds.
  - No right to bring a stand-alone claim (appeal) to SENDIST.
  - Tribunal's powers in respect of these elements c.f. education(al) matters within an EHC Plan.
  - Importance of health (ICB) and social care contributions.
    - Regulation 6/Regulation 7 responses.

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Considerations upon an appeal being registered (1)

- The SEND Tribunal will confirm registration and the final hearing date.
- On registration, the Tribunal issues directions, an attendance form, and a case management questionnaire.
- Directions set deadlines for actions and evidence submissions.
- Extended appeals should be shared with health services from the outset.
- Effective liaison between the DCO and local authority tribunal officer is essential.
- Significant hearing delays can result in clinical evidence becoming outdated.
- Delays are also leading to more late evidence being submitted.
- Parties must notify the Tribunal and each other of any witnesses and attendees by the specified deadline.
- The local authority receives the appeal and accompanying directions.
- The local authority should promptly identify health involvement and obtain the necessary health evidence

Considerations upon an appeal being registered (2)

- LA must respond within 30 working days and provide its evidence to the family and Tribunal.
- The LA may apply to strike out an appeal; families must have an opportunity to respond. Watch for repeat appeals on similar issues.
- Appeals may be resolved by agreement, consent order, or, in some cases, automatically conclude where the LA agrees to take the requested action.
- The LA must complete any agreed actions within the required timescales.
- LAs cannot agree health provision on behalf of health services; clear DCO, tribunal officer, and ICB/budget-holder involvement may be required.

Considerations for LA upon an appeal being registered (3)

- If the LA does not send a response by the end of the time in which they have to reply, the SEND Tribunal can do a number of things, including barring the LA and by association health from taking further part in the appeal.
- We are seeing more instances on 'Unless Orders' and barring.
- Before deciding what to do, the SEND Tribunal will write to the LA asking for an explanation for their failure to respond, or failure to respond in time.
- A tribunal judge will consider any reply the LA gives and will decide what should happen.
- If the LA is barred from further involvement, the SEND Tribunal will decide whether a family's case can be dealt with on the papers or whether there should be a hearing, to which the LA would not attend.
- If LA is barred, then this impacts upon health and social care aspect.

Why do Local Authorities lose appeals?

Recurring Themes

- Delayed assessments
- Poor quality evidence
- Vague provision
- Failure to explain decisions/Ignoring professional recommendations

Consider

- Timeliness
- Testing the evidence
- Tightening up wording – who/what/when/where/for how long?
- Transparency

What evidence might the LA need?

Evidential considerations

Strong Evidence

✓ Recent assessments

✓ Clear recommendations

✓ Quantified provision

✓ Objective observations

✓ Consistent reporting

Weak Evidence

✗ General assertions

✗ Outdated reports

✗ Unexplained conclusions

✗ Contradictory information

Expert Witnesses and Expectations

Common Experts

- Educational psychologists
- Speech and language therapists
- Occupational therapists
- Specialist teachers
- Medical professionals

Tribunal expectations

Experts should:

- Remain independent
- Explain methodology
- Justify recommendations

=> Confirmation of understanding of requirements included in reports and/or witness statements.

=> *R&RK v Hertfordshire County Council* [2025] UKUT 381 (AAC)

The Working Document

- The **Working Document** is a version of the final EHC Plan showing agreed changes, proposed changes, and the issues that remain for the Tribunal to decide at the hearing.
- The Working Document is sent to the SEND Tribunal before the hearing, so it should be clear and carefully drafted, particularly where the disputed issues are complex.
- In extended appeals, ensure partner agencies remain involved, including obtaining ICB review of health sections (C and G) and social care review of relevant sections (D and H).
- Ensure all local authority witnesses, especially representatives of the proposed placement, have seen the latest Working Document before the hearing.
- Tribunal judges may refer witnesses from proposed settings to the Working Document and ask whether the provision sought could be delivered if ordered by the Tribunal.

What is the process? – Making any changes to the grounds / withdrawing the appeal

- Any changes to the appeal after it has been registered must be approved by the SEND Tribunal and requested using a **Request for Changes** form.
- Families may sometimes add issues to the appeal at a later stage.
- Keep talking to the other party throughout the appeal to try to reduce disagreements and reach an early settlement.
- An appeal can be withdrawn with the Tribunal's permission by submitting a Form SEND8
  - SEND46 – Draft Consent Order if full agreement reached
  - Otherwise, SEND7 – Request for Changes to vary/narrow Grounds…
- Withdrawal requests made more than three weeks before the hearing are usually accepted. Requests made within 15 working days of the hearing will be considered by a judge and may be refused.

Appeals relating to Section I - Practical considerations

- Strong Section F evidence is critical as placement decisions often turn on ability to make provision.
- Tribunals compare the suitability of competing placements.
- Detailed evidence from school/college professionals critical including witness attendance.
- Costs are relevant but cannot override parental/young person preference unless the legal tests are met.
- ‘Efficient education of others’ exception =/= school is ‘full’.

How is the evidence presented?

Expert Reports

- Must include an executive summary, no more than 2 A4 pages
- Maximum of 15 A4 pages, including the executive summary (minimum font size 12)
- Be divided into numbered paragraphs
- Be no older than 3 years at the point the appeal is made

Professional / School (college) reports

- Must be no more than 3 years old at the time the appeal is made,
- Unless they are appendices to the EHC Plan (Section K)

Witness Statements => limit of 10 pages

Key procedural and substantive factors to evidence in the FtT

- Late evidence?
  - Admissible with permission – *HJ v London Borough of Brent* [2010] UKUT 15 (AAC) – application for permission made by standard 'Request for change' (Form SEND7).

- Tribunal may use its expertise is fact dependant – not unlawful for the Tribunal to disagree with parental evidence where the LA has not put in any evidence of its own.
  - Expert opinion can be rejected, but only with clear reasons.[*Buckinghamshire CC v SJ* [2016] UKUT 254 (AAC)]

- Other recent(ish) key cases on evidence and approach to evidence:
  - *MM (as alternative person for C) v Royal Borough of Greenwich (Special Educational Needs)* [2024] UKUT 179 (AAC)
  - *R & RK v Hertfordshire CC* [2025] UKUT 381 (AAC)

R & RK v Hertfordshire CC [2025] UKUT 381 (AAC)

Issue 2: Evidence and adequacy of reasons:

- "Expert evidence only as good as the reasons for it."

- The Upper Tribunal accepted that:
  - The First-tier Tribunal had engaged with the evidence; had explained why particular provision did or did not educate or train the child.
  - The reasons given were sufficiently clear to explain the outcome.
  - An appellate tribunal should not interfere simply because the reasoning could have been expressed differently or more fully.

> The tribunal was assessing expert evidence. In other words, it was assessing the opinions of the experts. The assessment of evidence is a matter for the tribunal. **It does not have to accept evidence, even from an expert. It must, though, have a reason for not doing so. Expert evidence is only as good as the reasons for it.** In this case, the tribunal was a specialist one, used to dealing with issues relating to educational needs and provision.

What helps to make a report or statement effective?

Good reports usually share several characteristics.

They are:

Specific

- Precise rather than vague.

Evidence-based

- Supported by observations, assessments and professional judgement.

Child-centred

- Focused on the individual child.

Outcome-focused

- Looking towards meaningful progress.

Accessible

- Written in language families and professionals can understand.

Current

- Reflecting the child's present circumstances.

What helps to make a report or statement effective? (2)

In respect of ‘needs’ (e.g. Section B)

A ‘diagnostic’ description of need alone is rarely sufficient; explain functional consequences and barriers to learning.

Explain impact on education; attendance/participation, independence and preparing for adulthood themes (where older child).

In respect of ‘provision’ (e.g. Section F)

Avoid: vague wording, recommendations without frequency; unexplained acronyms.

Report #1: "Speech therapy input may be beneficial."

Report #2: “One direct speech and language therapy session of 30 minutes should be delivered weekly by a registered speech and language therapist."

Summary

Reports and advice contributions may be scrutinised in a variety of different contexts including by an expert panel (Tribunal).

- ✓ Identify the need
- ✓ Explain the impact
- ✓ Specify outcomes
- ✓ Quantify provision
- ✓ Use evidence
- ✓ Write clearly
- ✓ Keep it child-centred

What is the process? – Bundles

- **An updated Tribunal Practice Direction was issued on 22 April 2025 but takes effect for final hearings listed to take place after 15 July 2025 -** Microsoft Word - HESC SPT BUNDLE PRACTICE DIRECTION 2025 for publication

- The prescribed page limits for each section of the bundle do not appear to have changed although the labelling **has.**
  - Previously a SEND Bundle was split into parts A – H; now it's labelled Parts 1 – 7.

- There is now an explicit limit on the length of the final working document – 25 pages.

- In line with many other Courts/Tribunals, witness statements are to be divided into numbered paragraphs.

- The LA must send the tribunal bundle electronically to HMCTS' Document Upload Centre (details of which can be obtained from the Tribunal). The appellant must receive the bundle at the same time – they will not have access to the document upload centre so it will need to be sent by email/secure file transfer system.

- **Paper bundles need only be supplied by the LA or RB to the appellant/claimant if one is specifically and reasonably requested. The Tribunal's default position is electronic.**

Who might be called as a witness?

What type of witness am I?

Witnesses of Fact

Health, social care and education professionals: factual witnesses but they can use their knowledge and experience within their professional field.

They can also use this expertise to say why they may not agree with private reports.

Expert witness

Need to show that they:

- Know about the Tribunal's process and their role in it; know about the SEND Code of Practice.
- Understand the issues in the case.
- Follow all relevant professional codes of conduct and best practice.
- Have up to date knowledge in their area of expertise.

The practicalities of being a witness – what should I expect?

Role of a witness?

- Assist the Tribunal.
- Act impartially.
- Supplement and/or clarify their written evidence.
- Help the Tribunal reach lawful findings.

In preparation for the hearing, witnesses will need to have:

- A clear understanding of what the Appellant seeks **and** the LA's position;
- A working knowledge of the Tribunal process;
- Familiarity with the Working Document (where one exists); and
- Sight of the Bundle.
- Some knowledge of the child/family.

- Procedural requirement: a statement /report which features in the Tribunal bundle.

The practicalities of being a witness – what should I expect?

Remote hearings

- Check your tech!
- Be in a private space.
- Is there a way of communicating with e.g. a legal representative?

How much time do I need to commit?

What about the hearing itself?

'Health Warnings'

What has been your experience of giving witness evidence?

How would you feel about being asked to give witness evidence in a Tribunal appeal?

Any tips?

1. Take the time to settle when called and allow the legal representative to lead into your evidence.
2. Context is important for tribunals so while answering the question asked, if some explanation is needed give it.
3. Don't use medical or treatment jargon- treat everyone as lay people who may not understand the education / social care / NHS structure or how any relevant provision is commissioned or provided.
4. Do not become defensive toward the family even if they are being very challenging – stay professional and calm.
5. Demonstrate the wish to keep the child/young person central.
6. Wait for the questions to come ; there may be pauses - it is normal for there to be pauses between questions.
7. If you do not understand a question, say so. Also do say if questions are outside professional expertise.
8. Do not seek to introduce information for the first time while giving evidence – anything you would wish to rely upon should already have been available to the LA to put into the Tribunal bundle beforehand.

What is the process? – Outcomes

- However, the health and social care findings findings are non binding. Non compliance does come with risk
- The Tribunal will not typically write to the responsible commissioning body – LA must therefore notify health of decision where health recommendations made.
- The responsible commissioner must respond to the family and LA in 5 weeks unless the Tribunal directs otherwise.
- Response in writing stating what steps if any the responsible commissioning body has decided to take following its consideration of the recommendation, and, give reasons for any decision not to follow the recommendation or part of it - under **Regulation 6 of the 2017 Regulations**.

Part 2 – Mediation, disagreement resolution, and (briefly!) judicial review.

What role does mediation have in SEN disputes?

Mediation in SEND disputes

- Two routes into mediation under the Children and Families Act 2014
  - i) In respect of matters that can be appealed to the FtT – 'Section 51(2) decisions'
  - ii) Health and social care elements of an EHC Plan – which are not appealable* to the FtT
- Whilst mediation and dispute resolution/disagreement resolution used interchangeably – mean different things (See para 11.5 SEND Code of Practice 2015)
  - Mediation is an example of 'Alternative Dispute Resolution'
- Mediation acts as a gateway to appeals to the Tribunal – need for 'mediation certificate'
  - Exception: Section I only appeals.
  - Need for mediation certificate =/= parents or a YP have to engage in mediation.
  - If mediation is requested the local authority (or ICB) MUST participate – and – must send person with decision-making authority.
  - Agreement on issues re: an EHC Plan made in mediation - as if Ordered by Tribunal.
    - Compliance with mediation agreement.
    - Timescales for compliance.

Principles of SEND mediation

- Mediation remains voluntary for parent/young person
  - Proposals that mediation will become mandatory (watch this space!)
- Mediation is a 'without prejudice' process.
  - To allow for full and frank exploration of issues.
- When a mediation action plan is drawn up it takes effect as if it was a decision of the Tribunal.
  - Practically speaking: Deadlines for implementing any agreed steps are the same as if a decision of the Tribunal.
  - Failure to comply risks further legal challenge.
- Public bodies must send a decision maker – someone with the authority to make a decision **at** the mediation meeting.

Mediation re: Section 51(2) decisions

- 1st route: matters that can be appealed to the FtT – 'Section 51(2) decisions'

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).

- What are the matters set out in subsection (2)?
  - See Tribunal (Part 1) – 'Primary Grounds of Appeal'.
  - In essence any decision arising from the EHC Plan 'lifecycle' incl 'Refusal to assess'.

- Section 55 is gateway provision for appeal.

Section 55 – gateway provision

55Mediation

(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).

NB//Some definitions/supplementary information also contained at Section 56.

Mediation certificate

(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.

What happens following a request for mediation?

What issues are raised by the request for mediation?

Issues	Responsibility for arranging the mediation?	Timescales for organising mediation	Who should be in attendance?	What happens following mediation?
Education only (including Sections B & F)	Local Authority	30 days from request	LA decision maker	Mediation agreement and Part 2 Certificate issued.
Education placement only	Local Authority	30 days from request	LA decision maker	Mediation agreement.
Healthcare provision only	ICB*	30 days from request	ICB decision maker	Mediation agreement.
Education and Healthcare provision	LA	30 days from request – ICB to be notified w/in 3 days.	LA decision maker AND ICB decision maker	Mediation agreement and Part 2 Certificate
Education and Social Care	LA	30 days from request	LA decision maker (x 2(?))	" "

Preparing for mediation

- Minimum 5 working days notice unless parent/young person consents to shorter notice period.
- Keep in mind the core 'principles' of mediation
  - A 'without prejudice' process.
  - Non-adversarial (as is the FtT process).
- What evidence do I need?
- Who do I want to be present at mediation?
  - Public bodies must send a decision maker. (Regulation 37(1) SEND Regulations 2014)
- Who does the parent/Young Person want to be present?
- Can we resolve pre-mediation?

Who can attend mediation?

Regulation 38, the Special Educational Needs and Disability Regulations 2014

Regulation 38(1) lists:

- Parties* to the mediation
- *Any* advocate or supporter that parent or young person wishes to attend
- The child (with agreement of the parent *and* the mediator)/young person with similar agreement
- any other person, with the consent of all of the parties to the mediation, or where there is no such agreement, with the consent of the mediator.

Kumar v London Borough of Hillingdon (Rev 1) [2020] EWHC 3326 (Admin) (04 December 2020)

Mediation itself

- Flexible process.
- Mediator – by law – has to have ‘sufficient knowledge’
- Different approaches – ‘shuttle mediation’ vs ‘plenary-style mediation’.
- Without prejudice process but be careful as to what is recorded in any agreement/action plan drawn up.

What might make an effective mediation?

- Impartial and expert mediator.
- Using 'With prejudice' status to allow full & frank discussion – compromises offered/positions tested.
- Preparation – both in terms of logistical arrangements, but in terms of the public body's case to be presented.
- Legal representation? (SEND Code of Practice 2015 says generally 'should not be necessary' – but accepts that it is matter for the parties. NB//Code says matter for the mediator to agree – *Kumar* decision sits at odds).

Post-mediation steps

- Regulation 42, the Special Educational Needs and Disability Regulations 2014

- Where an agreement has been reached this will be recorded in writing.
- Time limits for actions for which right of appeal exists same as if a Tribunal panel had ordered what has been agreed.
  - Or two weeks of the date of mediation agreement where relates to a matter for which no right of appeal.
  - Compliance with mediation agreement is essential!

What are your experiences of mediation?

What's disagreement resolution?

What is disagreement resolution?

- Designed for disagreements re: performance of duties by public bodies.
  - Disagreements about SEN provision (to extent that not an appealable decision).
  - Disagreements about health and social care provision.
  - Disagreements arising from EHC Needs (re)Assessments

- Might also be utilised where attendance issues/exclusions arise for a pupil with SEND.

- Similar principles/approach to mediation but for a wider remit.
  - On a different statutory footing to mediation.

Is there also the risk of a public law challenge?

Judicial Review (JR)

- Should be a ‘remedy of last resort’.
- What is a Judicial Review?
  - (Roughly) - Process not substance of the decision
- Any threat of Judicial Review needs immediate legal advice.
- Strict timetable for responses and delay can jeopardise a defence /resolution.
  - Document steps taken - even after pre-action letter received.

Summary/Closing Thoughts

Table within SEN Code of Practice 2015
(pp246 – 247)
Children and young people with education, health and care needs – avenues for complaint and redress

Any **questions?**

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