

Appeals and Tribunals

7 July 2015

Introduction

- + My role
- + Areas of work within the disability rights unit:
 - Community care
 - Public law
 - Mental capacity issues/Court of Protection
 - Special educational needs

Terms

- + Definition of SEN: a child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision
- + Definition of learning difficulty or disability: significantly greater difficulty in learning than the majority of others of the same age, or has a disability which prevents or hinders him or her from making use of educational facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions

Systems in place

- + Children and Families Act 2014
- + Changes as of 1st September 2014
- + Old system
- + Transitional arrangements
- + New system

Old system

- + Code of Practice 2001
- + The Education Act 1996
- + The Education (SEN) (England) (Consolidation) Regulations 2001

New system

- + Code of Practice 2015
- + Children and Families Act 2014
- + The SEN Regulations 2014

Appeals

Appeals to The First-tier Tribunal (SEN and Disability) (SENDIST)

Note: under new system the young person can appeal if they have finished year 11 and are under 25.

- + Refusals to conduct an EHC/statement needs assessment or reassessment
- + Refusals to make an EHC plan/statement after assessment or reassessment
- + Description/provision in EHC plan/statement
- + Refusals to amend an EHC plan/statement following review/reassessment
- + Refusals to change the name of the school on an EHC plan/statement
- + Decisions to cease to maintain an EHC plan/statement
- + Disability discrimination – 6 month time limit

Social/Health provision

- Mediation can be used
- If no resolution – cannot appeal to Tribunal but rather complaints etc, ultimately may be further legal proceedings
- Links to community care – legal aid (later)

Time limits

- + Old system – 2 months from date of decision letter
- + New system – 2 months from date of decision notice/1 month from date of mediation certificate
- + Exceptional reasons to extend timeframe – Tribunal Rules

Funding – legal aid

- + Legal aid – public funding – financial eligibility
- + Legal Aid Agency
- + Civil Legal Advice: 0845 345 4345
- + Availability for SEN – limited areas of law
- + Available for community care – judicial review – preparatory and representation – subject to means/merit

- + Legal aid available for preparatory work but not Tribunal representation
- + Tribunal **representation**:
 - Parents/carers
 - Pro bono assistance, volunteer advocates etc
 - Privately funded

Mediation

+ Important:

- Cooperation
- Funding
- Timeframe, i.e. Tribunal proceedings 3-6 months

Appeals

+ Important points:

- + Right to appeal refusal of EHC/statement reassessment triggered only where local authority has **not** carried out an assessment in previous 6 months
- + Decision to cease EHC/statement – the local authority has to maintain the plan until Tribunal's decision is made

Outcomes of Tribunal

Powers set out in Regulations:

- + Dismiss appeal
- + Order the local authority to carry out an assessment
- + Order the local authority to make/maintain EHC/statement, or maintain EHC/statement with amendments
- + Reconsider or correct a weakness in the plan

- + Time limits to comply
- + Decision should be sent within 10 working days

Evidence & Procedure

- + Witnesses
- + Experts – reports/possible through Legal Help and privately funded
- + Importance of documentation

- + Provide a copy of decision/date of decision/certificate
- + Reasons why
- + Evidence
- + Once registered..
 - LA sent copy of papers
 - Response
 - Witnesses
 - Hearing date
 - Judge and panel of Tribunal members
 - LA to provide bundle
 - Guidance online

Questions

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Thank you