

8. Dispute Resolution & Appeal Procedures

The LEA's procedure is summarised on two flowcharts to be found in Appendix D to this document:

- 12. Disagreement Resolution Procedures, and
- 13. SEN & Disability Tribunal Procedures

8.1 Dispute Resolution

Section 332B of the Act (as amended by the SEN & Disability Act 2001) requires the LEA to set up a dispute resolution service:

A local education authority must make arrangements with a view to avoiding or resolving disagreements between authorities (on the one hand) and parents of children in their area (on the other)

[Act 332B(1)]

This service also applies to the resolution of disputes, within schools:

A local education authority must also make arrangements with a view to avoiding or resolving, in each relevant school, disagreements between parents of a relevant child and the proprietor of the school about the special educational provision made for the child.

[Act 332B(2)]

8.2 Parent Partnership

The LEA has set up a Parent Partnership Service (as required by section 332A of the Act) which will play a key role in the resolution of disputes between parents and schools or parents and the LEA.

8.3 Dispute Resolution Procedure

When the LEA writes to Parents concerning a refusal to assess, a refusal to statement or a refusal to comply with a parental request for a change of named school, parents will be advise about the Parent Partnership Service, about the LEA's conciliation service and of the parent's right of appeal to the SEN & Disability Tribunal. A copy of this letter will be sent to the Parent Partnership Service.

Parent Partnership will immediately write to parents giving them further information on the services offered including the mediation service. Parents will be invited to contact the service if they wish for support.

In addition, when the LEA sends the final statement to parents they will also be advised of Parent Partnership and the services offered. They will be invited to contact the service if they wish for support in the resolution of a dispute.

- 8.4 If parents do contact Parent Partnership for support they will always be advised that this is not a substitute for an appeal to the Tribunal. They will be reminded of their right to appeal within 2 months of receipt of any letter offering that right. It is essential that the local dispute resolution service is completed within this 2 month period to avoid, wherever possible, the necessity for the formal appeal.
- 8.5 When parents request dispute resolution, a link worker from Parent Partnership will visit the family within one week. The views of the parents and the child will be sought – separately if this appears necessary.

If following this initial discussion, parents wish to proceed further then the parents or the link worker can request a meeting with the Principal Officer within the SEN Assessment Service who made the decision being disputed. A meeting will be arranged to take place within one week from the date of the request. A representative from school or an early years setting will always be invited to attend. Other professionals will be invited as considered appropriate by parents and the Parent Partnership Link Worker.

- 8.6 It is hoped that this meeting (or further such meetings as necessary) will resolve the majority of concerns raised by parents. The LEA will always look to clarify and listen to issues raised and amend decisions or written information as appropriate. In circumstances when this procedure does not result in an agreed outcome for the parents they will be supported by the Link Worker to proceed to the next local stage.

The link worker will immediately make a verbal request to the Head of Parent Partnership for a meeting to take place. She will liaise with the Strategic Manager, Parent & Learner Support who will arrange to meet within two weeks from the date of the meeting with the Principal Officer. The parents/link worker and the principal officer will separately summarise the issues as they see them. Within one week of the date of the meeting with the Principal Officer, this will be passed with the SEN Assessment Service casefile to the Strategic Manager, Parent & Learner Support. As already arranged, a senior officer meeting will then take place involving the Head of Parent Partnership and the Strategic Manager, Parent & Learner Support. The Assistant Education Officer most relevant to the case in question will also attend. This meeting will take place within two weeks from the date of the last meeting with the Principal Officer.

It is important to note that this meeting is not a meeting with parents – this has already taken place. Instead, it is a final opportunity for the two most senior managers within the services to consider the case as independently as

possible, based on the evidence available together with the written summaries provided by the Link Worker/Parents and the Principal Officer.

- 8.7 The Head of Parent Partnership will give verbal feedback to the link worker the next working day. If this management meeting concludes against the parents wishes then the Parent Partnership worker will visit them within one week from the date of the meeting. Parents will then be offered the opportunity to be referred to the Regional Mediation Service. If even after this independent service has taken place, the parents still remain dissatisfied then their only course of action would be to appeal directly to the SEN & Disability Tribunal. However, the LEA always aims to reduce this necessity.

8.8 **Summary of Dispute Resolution Timescale**

Within 2 weeks of request from parents:

- Parent Partnership will meet with Parents/Child if requested

Within 2 weeks of request from Link Worker:

- Principal Officer (PO) will meet with Parents, Link Worker, School & others as appropriate

Within 2 weeks from date of PO meeting:

- Strategic Manager, Head of Parent Partnership & AEO will meet to discuss case – with written summaries of case being provide to them within 1 week by Link Worker and Principal Office.

Next working day

- Head of Parent Partnership will advise link worker of outcome – parents will receive a written response within 1 week of this meeting.

Within 1 week from meeting:

- Link Worker will meet with parents to discuss referral to Regional Mediation Service.

8.9 **SEN & Disability Tribunal**

The formal procedures are set out in the SEN Tribunal Regulations 2001 and are summarised on a flowchart in Appendix D – “13. Sen & Disability Tribunal Procedures”

If a parent appeals, the Tribunal will write to the LEA to advise them. The case will be logged by the Strategic Manager’s Personal Assistant who will advise the Manager that the appeal has been made. The Assistant will pass all papers received across to the appropriate Principal Officer (i.e. the officer who made the decision against which the parents are appealing).

The LEA must reply to this appeal within 30 days of the delivery of the appeal. The reply will be co-ordinated by the Principal Officer. This officer will liaise as necessary with their AEO and with the Strategic Manager, Parent & Learner Support, in order to agree the content of the LEA's case, who (if anyone) will represent the LEA at the Tribunal hearing and who the witnesses will be. Both the Principal Officer and the Strategic Manager will be well aware of the case as they will both have been directly involved in the local attempt to resolve the parental disagreement.

8.10 **Birmingham's procedures leading up to Tribunal Hearing**

All matters relating to the procedures of the SEN Tribunal will be co-ordinated by the Principal Officer [numbers in brackets below refer to the relevant sections of the SEN Tribunal Regulations 2001]:

- Writing the LEA's case stating: the grounds on which it relies; the name of the LEA's representative; a summary of facts; the reasons for disputed decision; the views of child or reasons why not ascertained [13(1-2)]
- Amending or supplementing the LEA's case, in exceptional circumstances [13(3)]
- Agreeing the change of the LEA's representative at any time [14(1)]
- If not attending Hearing, LEA may – not less than 5 days before Hearing – sending additional representations in support of the case [16(3)]
- Naming up to 2 witnesses when requested [20; 34(1)]
- Requesting the Tribunal to issue a direction, if considered appropriate [21(2)]
- Asking the Tribunal to summon witness – at least 8 days before Hearing [26(2)]

Direct communication with the Tribunal, whether by telephone or in writing, will normally be made by the Personal Assistant to the Strategic Manager.

8.11 **Birmingham's procedures after the Tribunal Hearing**

All matters relating to the LEA actions that are necessary after the SEN Tribunal's decision has been received, will be co-ordinated by the Principal Officer.

Under regulation 25 of the SEN Conciliation Regulations, unless a prescribed exception, the **LEA must comply** from the day after the issue of Tribunal's

written Order or from day after LEA notifies SENT of their decision to concede the appeal, as follows:

- To assess - within 4 weeks
- To issue statement - within 5 weeks
- To consider a remit - within 2 weeks
- To amend statement - within 5 weeks
- Not to cease statement - immediate
- To name a new school - within 2 weeks
- To cease (if SENT agree) - immediate or as LEA decide

Note, that under the regulations:

Every decision shall be treated as having been made on the date on which a copy of the document recording it is sent to the parent (whether or not the decision has previously been announced at the end of the hearing).

[SEN Tribunal Regulations, section 36(7)]

8.12 Exceptions to Tribunal compliance timescales

Under the regulations, the LEA need not comply with the timescales given in 8.11 above:

....if it is impractical to do so because –

- (a) exceptional personal circumstances affect the child or his parent during the relevant time period;
- (b) the child or his parent are absent from the area of the authority for a continuous period of not less than 2 weeks during the relevant time period;
- (c) the child's parent indicates that he wishes to make representations to the authority about the content of the statement under paragraph 4(10) of Schedule 27 after the expiry of the 15-day period for making such representations provided for in paragraph 4(4) of that Schedule;
- (d) a meeting between the child's parent and an officer of the authority has been held pursuant to paragraph 4(1) of Schedule 27 and the child's parent under paragraph 4(2) of that Schedule either required that

another such meeting be arranged or has required that a meeting with the appropriate person be arranged, or

- (e) the authority have sent a written request to the Secretary of State seeking his consent under section 347(5) to the child being educated at an independent school which is not approved by him and such consent has not been received by the authority within 3 weeks of the day on which the request was sent.

[Regulation 25(4) of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001]

Practically, exceptions (c) to(e) should not occur as the Tribunal will already have ordered what the content on the statement should be (if that is the issue of the appeal).