

Newcastle SENDIASS How to Guide:

How to appeal a decision



The First-tier Tribunal (Special Educational Needs and Disability “SEND Tribunal”) is an independent national tribunal which hears parents’ and young people’s appeals against local authority decisions about the special educational needs of children and young people. You can appeal to the tribunal if you disagree with a decision made by the local authority in relation to Education, Health and Care needs assessments and Education, Health and Care Plans (EHCP).

The SEND Tribunal looks at the evidence put before it and decides whether the local authority’s decision followed the law and the SEND Code of practice. It will make a decision based on what is right for the child or young person at the date of the hearing.

When can I appeal?

To be able to appeal, you must be a parent or a young person over the age of 16. In education law ‘parent’ means you are either a birth parent, have acquired parental responsibility or have care of the child (e.g. a foster parent or grandparent with whom the child lives). If the decision concerns a child, it is the parent who has the right of appeal. If the decision concerns a young person, then it is the young person who has the right of appeal.

You can bring an appeal to the SEND Tribunal if a local authority:

- refuses to carry out an EHC needs assessment or a re-assessment;
- refuses to issue an EHCP;
- issues or amends an EHCP but you disagree with any or all of Section B (special educational needs), Section F (special educational provision) or Section I (placement);
- decides not to amend an EHCP after an annual review;
- decides to cease to maintain the EHCP at any point.

The deadline for making appeals is two months from the date of the letter from the local authority giving their final written decision. Before bringing an appeal to the SEND Tribunal, you must consider mediation. This does not mean that mediation is compulsory, but it must be considered. The exception is if you are appealing only about the school or college placement, or where no school or college is named, and you are appealing about that fact. If you go to mediation or decide that you don’t

want to go to mediation you will need a mediation certificate issued by a mediation provider before you can make an appeal. You will have two months to request a mediation certificate from the date of the letter from the local authority giving their final decision. You will then have an additional 30 days from the date of the Mediation certificate to make an appeal to SEND Tribunal. Mark these dates on a calendar to ensure that you do not run out of time and lose your right to appeal.

How to register the appeal

You will need to fill in an appeal form, which you can obtain from the SEND Tribunal's website (<https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>). Make sure you are using the right form.

The form

The appeal form is split into different sections for you to complete. If you cannot fit all of the information into the given boxes you can write on a separate sheet of paper as long as it is made clear that you have chosen to do that.

Section 1 Your child – asks for details of the child.

Section 2 What are you appealing against – this is important because this is where you explain why you are appealing.

Section 3 Your appeal – asks for information about the Local Authority decision. This is the section where you explain why you disagree with the decision in detail, you can refer to reports and evidence to support your statements. Be as clear and specific as possible.

Section 4 Health and social care – asks for any disagreements relating to health and social care. You **must** be appealing against other sections of the plan (B, F or I) in order to be able to appeal these decisions.

Section 5 Local authority – asks for details of the local authority you are appealing against and details of mediation.

Section 6 Your details – asks for the details of the person who is appealing. This will be the parent's details for an appeal on behalf of a child.

Section 7 Others' details - asks for details of anyone supporting you with the appeal and the contact details of any representative that you may have. If you put SENDIASS down as a representative please make sure that you tick the box ensuring all correspondence are sent to you. SENDIASS cannot be responsible for receiving letters and updates from the tribunal.

Section 8 Special Requirements – asks if you have any special needs in terms of the appeal documentation and the hearing.

Section 9 Paper hearing – asks if you would like to have a paper hearing, rather than physically attend the tribunal. This section also asks if you would like a sooner date if one becomes available

Section 10 Checklist. Go through the list and tick the boxes to make sure that you have provided all the necessary information. You will need to ensure that you have a copy of the decision letter from the local authority, the final plan and reports, and a mediation certificate to go with your appeal form.

Section 11 Signatures – all parties to the appeal must sign the appeal form. Without signatures, SEND Tribunal cannot accept the appeal.

Section 12 Sending the appeal – explains where to send the completed appeal form.

There is an additional sheet where all documents sent must be itemised. Make sure all reports and pieces of evidence are clearly labelled and are written on this sheet. Make sure that all documents sent to the tribunal are copies, and not the original documents which should be kept for your records.

If you do not include all of the documents needed to register the appeal the tribunal will contact you and ask for the missing information. You are given 10 days to send the missing information to them.

What happens after I send my appeal?

The appeal will be registered within 10 working days of receipt. The SEND Tribunal will tell you that the appeal has been registered and the date of the final hearing of the appeal. The appeal number should be used whenever you contact SEND Tribunal about your appeal.

The tribunal letters contain a box which has all of the key dates leading up to the hearing. This gives you a timetable of events. The dates include

- The date the local authority must respond to the tribunal
- The final date for evidence. All of your evidence must be sent to the tribunal and a copy to the local authority by this deadline.
- The date that your attendance form must be sent to the tribunal. This is the form which you state who will be attending with you as witnesses.

- The date the local authority must send you a final bundle with all of the evidence in it
- The date of the hearing

The local authority must respond within 30 working days of a copy of the appeal notice being sent. They will send a copy of their response and any accompanying documents to you and to SEND Tribunal. If you do not receive a response from the local authority by the deadline you should inform the tribunal.

Preparing for tribunal

It feels like there is a lot to think about when you are preparing for a tribunal so it is important to separate these tasks and to be as organised as possible. The tribunal set the deadlines for each task so that will help you to prioritise what you need to do.

Evidence bundle

You will need to provide evidence to support your argument. Most of your evidence should be sent with the initial appeal form, however you have a period of time to gather any additional evidence that you may need. All copies of evidence must be sent to both the local authority and the tribunal by the given deadline. The local authority are then responsible for putting the evidence together into one bundle for the tribunal hearing.

Key evidence about the child or young person's SEN and the provision required to meet that SEN will usually be found in reports from professionals.

If the EHCP under appeal has just been issued following an assessment then there will be recent reports obtained as part of the assessment. There may also be reports you have which the local authority did not take into account.

There may be no recent reports; if that is the case you will need to look for professional evidence to support your arguments.

Useful sources of expert opinion include:

The health service: if the child or young person has been seen recently by a specialist or is receiving help from a health professional such as a speech and language therapist;

As well as evidence from the child or young person's current school or other institution, it may be helpful to request reports from teachers at a previous school or other setting if the child or young person has recently moved;

Privately obtained reports from independent professionals, such as an educational psychologist, occupational therapist or speech and language therapist. The relevant professional organisation (such as the British Psychological Society for educational psychologists) publishes names of members who can provide a private assessment. If the professional specialises in the difficulties experienced by the child/young person their views will have more weight. Private reports can be very expensive, so you may wish to consider:

If you qualify for Legal Aid, this could cover the cost of an independent report;

Voluntary organisations that specialise in a particular disability may be able to provide an assessment at a modest cost.

If you do decide to obtain independent expert reports, make sure they are compliant with the SEND Tribunal guidance for expert witnesses.

If you are finding it difficult to get hold of a report the SEND Tribunal has power to order the production of a document. If you apply well before the hearing using the request for changes form, an order may be made directing the local authority or anyone else who may have relevant information to release it.

As well as professional reports, the following can be useful sources of written evidence:

- Written statements from those involved with the child or young person. This can be particularly useful if they cannot attend as a witness. For example:
- Evidence from teachers;
- Evidence from someone who knows the child or young person from outside school, such as a worker at a youth club or a carer;
- Views and experiences of the parent – they will be the person who knows their child best, and what they have to say is evidence. Although the parent will be there on the day of the hearing it may be sensible to put in a witness statement explaining their perspective to ensure they get all their points across.
- Views of the child/young person, written by themselves if they are able to do so or via a third party.
- Home–school diaries.
- Video/audio evidence (this should be short and to the point; video evidence more than 10 minutes long is highly unlikely to be watched in full). It would be best to contact the Tribunal to find out how to submit your evidence, and you should send with it an explanation of who made the recording and how long it

is, the nature of the evidence, the identity of any witness recorded, and a statement of the facts the evidence seeks to establish.

- Published information from voluntary groups relating to the child's learning difficulty, or references to relevant research and findings – although beware of relying too much on secondary evidence. The best evidence is going to be primary evidence about the child/young person.
- Reports from annual reviews.
- Examples of the child or young person's work over time.

The key point is to think about the changes you want made to the EHC plan, and work out what evidence you need to show that those changes are necessary.

Working document

A working document is an important part of an appeal about the contents of the EHCP. It is a copy of the final EHCP, on which both you and the local authority will comment to show the changes to the wording that you want or can agree, as well as those issues which the Tribunal must decide on the day of the final hearing.

You should be given a Word version of the final EHCP (if not, ask the local authority to send you one). The SEND Tribunal directions will include a deadline for when the working document with both parties' amendments needs to be submitted to the SEND Tribunal, although you can continue to negotiate it after that date.

The working document uses a key so it is clear who is asking for the changes. The key is:

Normal type

Original EHC plan

Underlined type/ ~~Underlined strikethrough~~

Amendments agreed by both parties

Bold type

Parents' proposed amendments

~~Bold strikethrough~~

Parents' proposed deletions

Italic type

LA's proposed amendments

~~*Italic strikethrough*~~

LA's proposed deletions

Witnesses

Both parties will need to notify the SEND Tribunal who will be attending the hearing using the form the Tribunal sends them. This will be sent out with the registration letter, which will also contain the deadline by which this needs to be submitted. The Tribunal has indicated that witnesses will only be permitted to attend the hearing if they have previously submitted a report or written witness statement.

You should call witnesses who will be able to give evidence relevant to your case. It will normally be helpful to have someone from the child or young person's school or college (such as the SENCO or head teacher). If you want a particular school to be named in the EHC plan, you will generally need someone from that school to attend. If there is a dispute about the level of the child or young person's needs, it may be helpful to have a professional witness such as, for example, a speech and language therapist who has worked with the child or young person.

All witnesses will be asked by the SEND Tribunal about the facts of the case. They are not meant to be arguing one 'side' or the other. You shouldn't worry if someone from the child or young person's school or college is asked to attend as a witness by the LA; it does not mean that they are on the LA's side.

The appeal

At least 10 working days before the hearing, you will receive a full copy of the appeal bundle and details of the time and hearing venue. Sometimes your hearing may be postponed at short notice due to a lack of tribunal time, but you will be notified of this at least 48 hours before the scheduled start of the hearing.

Case management hearing

Sometimes, if there is an issue that a party has raised that is not easily resolved on the papers, a Registrar or Tribunal Judge will direct for a telephone case management hearing to be arranged.

This is a hearing that takes place by means of a conference call where the Tribunal Judge, the local authority representative and you or your representative (or both of you) will be able to discuss the case over the phone. You will be provided with a telephone number and an explanation of what you should do to join the hearing. Telephone hearings usually last between 20 and 30 minutes, and the Tribunal Judge will either give you a decision immediately or reserve the decision. In all telephone hearings, the orders made will be confirmed in writing within a few days.

Settlement or withdrawal of appeal

Some appeals don't actually get to a hearing, because the parties come to an agreement or the local authority agrees to what the parent or young person is asking for.

Where the local authority concedes before it has put in a response, it has to comply with the deadlines in SEND Reg 45 for assessing, issuing or amending an EHC plan.

Where the local authority has already put in a response, the parties should write up a document setting out what has been agreed and then both sign it. This is called a draft or proposed 'consent order'. The Tribunal has a template consent order you can use and we recommend that you do. It should be sent to the Tribunal with:

1. an explanation that the parties have agreed that the appeal can be resolved by consent,
2. all sections filled out, detailing exactly what has been agreed. The deadlines in SEND Reg 44 apply unless the parties tell the Tribunal they have agreed a shorter timescale.

If the Tribunal agrees to end the appeal, it will send the parties an order to confirm this.

Whilst the Tribunal is considering the request for the consent order, there should be no further delay and the local authority should start to carry out the agreed actions. For example, if the local authority has agreed to your choice of placement, it should not wait for the Tribunal to issue the consent order before naming that institution in the EHCP or reviewing home-school transport eligibility.

The Tribunal will not generally agree to issue consent orders that are requested within five working days of the hearing date. The parties should still send the request to the Tribunal so the panel is aware that they have reached agreement but the Tribunal will ask the parties to attend the hearing, usually simply to explain why it took a long time to reach agreement and to discuss the request.

The hearing

The hearing will be led by a 'panel'. For most hearings, this will be two people – a judge and a specialist member with substantial experience of SEN and disabilities. In some cases there may be a third member of the panel, but this is not typical.

In the case of an appeal about a child being brought by a parent, the child is entitled to attend the hearing and the SEND Tribunal may permit the child to give evidence and to address the SEND Tribunal. You must inform the SEND Tribunal in advance that you intend to bring your child. Usually the child will come in and see the panel with one person from each side for a chat prior to the hearing. The panel probably won't want to discuss the case with the child in attendance. The SEND Tribunal does not have facilities to look after children so you must make arrangements for the child to be looked after or taken home once they have met the panel.

You will be provided with a hard copy of the bundle in advance of the hearing (the deadline for preparing this will be included in the initial registration letter). The hearing bundle is a copy of all of the documents relevant to the appeal – all of the forms and evidence sent in by you and by the local authority, along with any Tribunal orders or other relevant documents. You should carefully check it through to ensure that all of the evidence is in the bundle and no relevant documents have been missed out.

It is best to check the SEND Tribunal guidance on their website for the rules about what should be in the hearing bundle and how it should be prepared.

You should bring the hearing bundle with you to the hearing. Work out where key documents are within the bundle, so that when you're talking to the judge you can tell them where to look for particular evidence.

The panel will have read the appeal and supporting evidence before coming to the hearing. The purpose of the hearing is to ask questions so they can better understand details of the case and make a decision. You will be given opportunities to have your say and to respond if you disagree with anything being said.

SEND Tribunal hearings are a legal process, but try to be as informal as circumstances allow. When you are shown into the hearing room, you will sit at a table facing the tribunal panel. At the start of the hearing, the Tribunal Judge will give an introduction, explain the procedures to be followed during the course of the hearing and a list of the issues to be considered during the hearing. The parties will be asked to introduce themselves.

The tribunal panel will consider the appeal on an issue by issue basis and you will be invited to give your view and your evidence about each issue in turn. If you have additional issues that you want to raise, which are relevant to the appeal and which haven't already been discussed, you will be given an opportunity to raise these before the end of the hearing.

When all of the issues have been covered, you may be invited by the Tribunal Judge to make some brief closing comments summarising your appeal. You do not have to do this if you consider that all of the relevant issues have been discussed and if you choose to do so, you should keep your comments brief. It is intended to be a chance to summarise your position at the end of the hearing, in light of any changes brought about by the evidence heard.

There are videos explaining what a SEND Tribunal hearing is like and films explaining video hearings at the SEND Tribunal on YouTube.

What happens next?

You should receive the decision and reasons by post within 10 working days of the hearing. The decision is sent to the nominated contact and the local authority.

Once SEND Tribunal's decision is issued, the local authority must carry out the order within a fixed period, beginning with that date.

- To start the assessment or reassessment process – four weeks
- To make a EHC Plan – five weeks
- To amend EHC Plan – five weeks
- To amend the school/college/institution – two weeks
- To continue an EHC Plan – immediately
- To cease (no longer maintain) an EHC Plan – immediately

You can get further information about appealing to the tribunal at www.ipsea.org.uk or by reading the guidance to appeal (form 37) on the SEND tribunal website.