

Tribunals

Together Trust SENDIASS

What is a Tribunal?

- The SEND Tribunal is governed by the law and must have regard to the Special Educational Needs and Disability Code of Practice that provide schools and Local Authorities with advice in identifying and providing provision for children and young people with SEND
- The First-tier Tribunal handle appeals regarding Education, health and care plans and Disability discrimination
- The First tier will decide if a parent can appeal a decision to the Upper Tribunal
- Parents and young people can appeal on:
 - points of law
 - If circumstances have changed

Reasons for an appeal

- Refusal to complete a needs assessment
- Refusal to issue and Education, health and care plan (EHCP)
- Section I in an EHCP which identifies the named school
- The contents of an EHCP

Top tips

- Sections B and F must be accurate and individual so that appropriate provision can be identified in section I of the plan and a clear thread from Section B (Special educational needs) to Section F (Provision to meet the needs identified) and Section I (the named provision suitable to meet the needs and provision) is present
- The information in sections B and F must be correct from the submitted reports that are provided through the needs assessment so that the type of provision named in section I is appropriate

Why go to Tribunal?



- An appeal to the SEND Tribunal can be made if you are unhappy with a decision made in relation to an EHC needs assessment or an EHC plan
- No fees apply for parents or young people to appeal to the SEND Tribunal
- The SEND Tribunal has the power to order Local Authorities to carry out EHC needs assessments, issue EHCPs, and amend existing EHC plans
- The tribunal is independent of government and is able to listen to both sides of the dispute and ultimately provide a decision that will be based on the law
- However, a tribunal process is not always straight forward and can be a challenging process to undertake
- When considering if a tribunal may be necessary there are options to consider including mediation and additional meetings to attempt to resolve the dispute

Top tip

- you may be eligible for legal aid if you are earning a lower income or in receipt of certain benefits. It is worth considering that in some cases a young person may qualify for legal aid in their own right

Sections B, F and I

Section B

- Should identify and provide detailed information regarding the needs of the child or young person

Section F

- Should contain special educational provision that meet all of the needs that are specified in Section B of the EHCP. The only relevant issue is whether the provision required to meet the child's needs is available

Top Tip – Provision is dependant on need and not on available resources or services

Section I

- Should identify and name the provision or the type of provision required to meet the needs of the child or young person

Local authority response

The Local Authority will send a letter to the parent, carer or young person detailing a decision which can be appealed, this should include;

- The parent, carer or young persons right to go to mediation
- That the mediation service must be contacted prior to registering the appeal with the tribunal, this is not the case if the appeal is just regarding section I
- Contact details for mediation service
- The timescales for requesting mediation
- Contact details for the person acting on behalf of the Local Authority
- Details should be available explaining that mediation will not affect rights going forward and they will not be disadvantaged if they have decided to not undertake mediation

Top Tip - Chapter 11 in the SEND Code of Practice provides information regarding mediation

Mediation

- Can take place following decisions by the local authority that include;
 - Refusal to carry out a Education, Health and Care needs assessment
 - Refusal to issue an Education, Health and Care Plan
 - Refusal to amend an Education, Health and Care Plan
 - Cease to maintain an Education, Health and Care Plan
- Once the parent, carer or young person has contacted the mediation service they will be provided with information that is factual, unbiased and unpressured
- Once the information has been shared it is the parent, carer or young person who decides whether they wish to go to mediation prior to the appeal going to a tribunal hearing
- If mediation is not required then a certificate will be issued from the mediation service within three working days of their decision to not go to mediation
- Once the certificate is received the appeal can be lodged by the parent, carer or young person

Top Tip – The appeal can be lodged either within two months of the original decision from the Local authority or within one month of receipt of the certificate – whichever is the later

Tribunal terms – What do they mean?

- Appellant – Parent, carer or young person
- Respondent – The Local authority
- Bundle – All of the paperwork for the hearing
- Lodged – Registered
- Working document – an amended EHCP with outstanding details to be clarified
- Grounds of appeal – reasons for the appeal
- Paper hearing – the hearing is held on paper only and the Appellant will not attend
- Court order – a direction issued by a court or a judge requiring a person to complete a task or not
- Consent order – a legal document that confirms the agreement between parties



SENDIST



SENDIST are responsible for handling all appeals against local authority decisions regarding special educational needs and disabilities

Contact details -

First-tier Tribunal (Special Educational Needs and Disability)

1st Floor, Darlington Magistrates Court

Parkgate, Darlington

DL1 1RU

United Kingdom

Email – send@justice.gov.uk

Call – 01325 289350

Fax – 0870 7394017

Lodging an appeal

Once the letter is received from the Local authority stating the right to appeal

- Mediation must be considered if the appeal is regarding more than section I
- Once the mediation certificate is received, if needed the appeal can be lodged
- The relevant appeal form will need to be completed dependant on whether the appeal is being lodged by a parent or a young person and what subject matter brings the appeal – **Top Tip** please use www.gov.uk for relevant forms
- Copies of the EHCP, appendices and any other evidence including the appeal form, the letter from the Local authority should be taken
- It is recommended that a chronology of events is included
- All forms should be sent via recorded delivery – this includes the appeal form to SEND tribunal, the mediation certificate, copies of reports and evidence within two months of the Local Authority letter or within one month of the date of the mediation certificate which ever is the later
- Alternatively all the information can be sent electronically

Timetable of the appeal process

Once the appeal has been lodged

- The appeal is registered and the Tribunal aims to respond within 10 working days, however this can take longer if the Tribunal receives a high volume of appeals
- The Tribunal is currently prioritising urgent cases and many have been adjourned – **Top Tip** – visit www.ipsea.org.uk for updates to the tribunal service
- A Case review form containing initial directions should be received
- The Local authority will also be informed from the Tribunal and they will receive copies of all appeal documents
- The Local authority are required to submit their response to the Tribunal by the date that is specified in the registration letter – this is usually within 30 days of receiving the appeal documents from the Tribunal
- The Local authority must state whether they oppose the appeal and the reasons for this decision and a copy must be sent to the parent or young person as well
- At this stage any additional evidence can be submitted to the Tribunal by the date specified and a copy should be sent to the Local authority as well
- At least 10 working days before the Tribunal hearing the Local authority should send the bundle to you detailing all the documents sent to the Tribunal in a page-numbered format

Registration letter

This will contain details of:

- The date of the hearing or in the case of a refusal to assess appeal the date that the appeal will be considered
- Details of when you and the Local authority will need to submit all evidence
- The date for the appeal bundle to be sent
- The fact that you have the right to request that the appeal is actively case managed by a member of the judicial team



The Tribunal should also send:

- An attendance form – designed to let parties and the Tribunal know who is going to attend the hearing and should be completed by parents and the Local authority to inform the Tribunal
- Case review form – this form has been introduced to aid the Tribunal in managing cases efficiently by providing progress on agreed issues that were previously in dispute
- A request for changes form – used to communicate any changes to the appeal during the course of the appeal

Evidence

The appeal process is based on evidence including written and oral

The evidence must be:

- Up to date, approximately within the last year if possible
- Should address the points of appeal
- It should be considered if the evidence is relevant

Examples of written evidence, may include:

- Written reports from a school or setting, services, professionals, records of meetings attended, therapy reports

Examples of oral evidence, may include:

- Parents views at the hearing, the schools evidence if they are in support of the appeal, the child or young person if they attend the Tribunal hearing, expert evidence that is provided in person that backs up written evidence, called witnesses, video evidence

Witnesses

- Both parties will need to inform the Tribunal who will be attending the hearing
- Witnesses need to be able to provide relevant evidence this may include someone from the child or young persons current school/setting or the particular school you want to be named in the EHCP. A representative such as the Special educational needs co-ordinator (SENCO) or Head Teacher are preferable
- If the dispute is regarding the level of need a professional witness will be required such as a speech and language therapist who has worked directly with the child or young person
- The role of a witness is to provide factual evidence
- A representative can assist in presenting the case at the hearing will not be counted as a witness however they should be detailed on the witness form with an explanation of their role or representation or assistance during the hearing

The Bundle

The Local authority put the evidence that is sent by the parent or young person and the Local authority together into a pack that is referred to as the bundle

All evidence submitted must be included in the bundle

If the evidence submitted exceeds the limit the Local authority must include it and it will be up to the Tribunal to decide whether to consider it or not

Working document

- The working document is an important part of an appeal regarding the contents of an EHCP that can be amended by both parties before the hearing
- The SEND Tribunal will detail a date for when the working document containing all amendments must be submitted
- Amendments should be identified on the working document using the recommended key and the Local authority should confirm if they agree with the amendments suggested and if they have any of their own suggestions
- The working document is used to identify the key issues that are in dispute and will ultimately ensure the hearing is more efficient

Normal type	Original EHC plan
<u>Underlined type/ Underlined strikethrough</u>	Amendments agreed by both parties
Bold type	Parents' proposed amendments
Bold strikethrough	Parents' proposed deletions
<i>Italic type</i>	LA's proposed amendments
<i>Italic strikethrough</i>	LA's proposed deletions

What to expect at the hearing?



- The Tribunal will consider all evidence submitted and decide if the Local authority decision followed that of the law, this will ultimately result in a decision that is based on what is right for the child or young person
- Guidance and resources are available on the www.gov.uk website including a booklet on how to appeal
- There are several videos available on YouTube explaining what a Tribunal hearing is like and what to expect
- A DVD can be requested from the SEND Tribunal
- These resources can be accessed by calling the Tribunal helpline 01325 289350, emailing send@justice.gov.uk or writing to

HMCTS –Special Educational Needs and Disability Tribunal,
1st Floor Darlington Magistrates Court, Parkgate, DL1 1RU

Concede or withdraw

- The majority of appeals do not result in a hearing as there is an agreement reached between the two parties or the Local authority agree to what the parent or young person is requesting
- As detailed in SEND Reg 45 the Local authority must submit a response detailing compliance to assess, issue or amend the EHCP by the deadlines that are detailed
- If the Local authority has provided their response a document should be produced that identifies what has been agreed and contains signatures from both parties – This document is the draft or proposed consent order
- This document is sent to the Tribunal including an explanation of the agreement reached and a resolution found detailing the dates the Local authority will complete the agreed amendments
- In general the Tribunal will not agree to issue a consent order that is requested within 5 working days of the hearing date

Useful links

www.ipsea.org.uk

www.gov.uk

www.togethertrust.org.uk/SENDIASS



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