

# SEND TRIBUNALS GUIDE



Giving  
disabled children  
a brighter future

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Navigating the world of EHC plans (Educational Health and Care Plans) can be quite challenging when your child has SEN (Special Educational Needs).

So the thought of having to appeal against a decision made in your EHC plan by your Local Authority can seem quite daunting. But don't worry this guide will support and advise you in your decision to appeal against any decision regarding your child's SEN.

## What is the First-Tier Tribunal SEND?

If you disagree with a decision made by your Local Authority relating to your child's SEN (Special Educational Needs), you can appeal to an independent body called the First-Tier Tribunal SEND (Special Educational Needs and Disability).

The First-Tier Tribunal is a free independent national tribunal that is responsible for handling appeals against the Local Authority's decisions regarding your child's SEN (Special Educational Needs).

The First-Tier Tribunal also handles appeals against discrimination by schools or Local Authorities due to a child's disability.

## What is A SEND Tribunal Appeal?

SEND Tribunal is a free service. Unlike going to court, there are no fees involved. The SEND Tribunal has the power to order your LA (Local Authority) to carry out EHC assessments, issue EHC plans, and amend existing EHC plans. The LA must comply with the SEND Tribunal.

Just a reminder that for some appeals mediation must be considered first. Mediation is a way of resolving problems with the help of an independent person who is trained to help each side express their views and reach an agreement. In some cases, mediation can avoid the need for a tribunal appeal. Mediation is free and voluntary.

Appealing against a decision that has been made by the Local Authority is different than making a complaint, as you can only appeal in certain situations.

Contact KIDS Mediation services at <https://www.kids.org.uk/mediation-info> for more information and advice on Mediation.

## What decisions can I appeal?

You can appeal a decision if your Local Authority refuses to:

- Assess your child's EHC (Educational Health and Care) needs
- Make a statement of their SEN (Special Educational Needs)
- Reassess your child's SEN after you have made a request
- Create an EHC plan after an EHC needs assessment
- Change what's in a child's Special Educational Needs statement or EHC plan
- Maintain (end) your child's statement or EHC plan

## What decisions can't I appeal?

You cannot appeal a decision about:

- How the school or college is supporting your child if you don't have an EHC plan (Education Health and Care Plan).
- The way the school or Local Authority are giving the help in your child's EHC plan, including decisions about personal budgets.
- Failure to meet the timescale or deadlines for the EHC process or annual review of an EHC plan.
- Transport to school or college (except where there is also an issue about the school named).
- The Local Authority's failure to do what the tribunal ordered them to do.

# Support throughout the appeal

- ▶ **Legal aid** - You do not need a lawyer to appeal in a SEND Tribunal. The majority of parents do not have a representative at their appeals. However, if you want legal support you may be entitled to public funding (Legal Aid) in preparing for your appeal, ask you local SENDIASS about your legal options.
- ▶ **Witnesses** - You can bring witnesses to the Tribunal however you must inform SEND Tribunal on the attendance form who you will be bringing with you, otherwise they can be prevented from being a witness for your appeal.
- ▶ **Parents** - The parents of the child/young person may go to the hearing. The tribunal judge can agree to limit a parents involvement in the case however if one parents does not want the other to attend and has explained the relevant reasons.

If you feel you need help preparing for your tribunal contact your local SENDIASS and they can provide advice and possibly a supporter or representative to support you in bringing an appeal.

# Appeal process

The process of making an appeal can take up to five months depending on the type of case. Usually, there will only be one hearing where you need to visit the tribunal. You have the right to appeal against your Local Authority's decision as soon as they have sent their decision in writing. They must notify you of:

- Your right to appeal the decision.
- The time frames you have to appeal the LA's (Local Authority's) decision.

## Who can bring an appeal?

- ▶ Appeals concerning children aged 0-16 years old can be brought by a parent/s, someone with parental responsibility or someone who cares for the child. That person can appoint a representative to act on their behalf during the appeal process. They may also have an additional supporter to attend the hearing to give them more support.
- ▶ Appeals concerning a young person aged 16-25 year old can be brought by the young person if the young person has the mental capacity to make an appeal. Appeals made by a young person will usually be supported by an advocate, which can be a parents, family members or other individuals including someone who has been paid to do so. A representative can also act on behalf of the young person for the appeal process and hearing, if appointed to by the young person.

However if the young person does not have the mental capacity to make decisions, then it can be brought by an Alternative Person acting in the best interests of that young person. This will be any Deputy appointed by the Court of Protection or the young person's parents.

If you have any special needs or need any special arrangements to be made ensure that you give details on the form.

## Are there limits for making the appeal?

Yes. SEND Tribunal must receive the appeal within two months of the date on the letter from the Local Authority giving you their final decision. If you miss the deadline, a Tribunal Judge may extend the time for making the appeal but you must ask for the extension by:

- Sending SEND Tribunal your completed appeal form as soon as possible
- Explaining why the appeal is late giving full reasons for the delay
- Explaining why you consider the appeal will be successful and should go ahead even if late
- Explaining why the local authority will not be prejudiced by the late appeal
- Explaining why you should not have to wait for an annual review or ask for another assessment.
- Drawing attention to any other matters that you think are relevant.

The Tribunal Judge may allow an extension if there are special circumstances which prevented the appeal being made in time and it is fair and just to do so. If the tribunal Judge allows the extension, the appeal will go ahead. If the Judge refuses an extension, the appeal will go no further.

## Preparing for your appeal

▶ **Tribunal Bundle** - It is essential the parties (you and the Local Authority) and the Tribunal panel have a well-ordered set of documents. Your Tribunal Bundle should only contain copies not the original documents.

▶ **Documents** - Think carefully and plan the information and documents that you want included in the tribunal bundle, as everything you send will be given to the tribunal panel.

You should try to send in all the relevant documents with your appeal before the set date. If they arrive later than the date you were given, it will be necessary to apply for an extension. If you do not send the appeal with the required documents within 10 working days your appeal may be struck out and the appeal will then be at an end.

**Reminder!** You must send copies of all documents to the Local Authority at the same time as you send them to the Tribunal.

▶ **Working document** - A working document is a copy of the final EHC Plan, on which both parties have worked to show the changes to the wording that they want or can agree, as well as those issues which the Tribunal must decide on the day of the final hearing. The working document is provided to SEND Tribunal in advance of the hearing so that the tribunal panel is aware of the detailed wording in dispute.

Sometimes, the options preferred by the two parties are brief and immediately clear to the reader. On other occasions the issues are more complex and/or lengthy and the working document may be confusing unless the document is carefully drafted.

Contact your local SENDIASS if you need help preparing your tribunal bundle and getting the correct documents prepared.



# The appeal form

**Reminder!** When you send your appeal form you are required to send all supporting documents and information for the SEND Tribunal.

Find more about the appeal form on page 14.

## Can I change my appeal?

Once the appeal has been registered, SEND Tribunal must agree to any changes to the grounds of appeal. You should complete the “Request for changes” form explaining the changes you want to make and explain the reasons for asking for the amendments and send a copy of the form to the local authority and to the Tribunal. The request will be considered by a Registrar or Tribunal Judge and an order will be issued and sent to you and the Local Authority.

## Can I withdraw my appeal?

The appeal can be withdrawn if it's more than three weeks before the hearing with SEND Tribunal's agreement. The application to withdraw must be made on the request for changes form and explain why you wish to withdraw. If you want to withdraw less than 15 working days before the hearing, you need to make the application in writing on the request for changes form setting out the reasons why you are withdrawing so close to the hearing.

A Tribunal Judge will consider the request and decide what further action, if any, is required. You may need to take part in a telephone conference to explain why you want to withdraw. A request to withdraw the appeal very near to the date of the hearing may be refused and both parties required to attend before a Judge to explain the reasons for the late settlement of the appeal.

## What happens after I send my appeal?

SEND Tribunal will tell you that the appeal has been registered and the date of the final hearing of the appeal within 10 working days of receipt.

When the appeal is registered you should be issued:

- **Case directions** – will tell you the dates when you must take action and send the Local Authority and SEND Tribunal information which will be considered at the hearing.
- **An attendance form** – you must complete the form if you wish to have someone as a witness. If you do not complete the form within the dates set your witness can be struck off from attending the hearing.
- **A case management questionnaire** – a questionnaire is given to you to fill out asking you about any issues you feel need to be sorted out before the hearing. At least 10 days before the hearing, you will receive a full copy of the appeal bundle and details of the time and hearing venue.

### Case management

About three weeks before the final hearing, you and the local authority may get separate telephone calls from a Registrar asking you about any issues arising from your completed case management questionnaire. The purpose of the call is to make sure that the appeal is ready for hearing. If the case is complex or there are issues which need to be sorted out before the hearing, you may be asked to have a telephone case management hearing. A case management hearing is an opportunity for the SEND Tribunal to consider any issues which need to be sorted out before the hearing can be held – for example, whether further assessments need to be carried out, or where one party wants to postpone the hearing and the other does not. It may also be an opportunity to narrow down the issues in dispute.

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. Sometimes, it is necessary to change the venue for the hearing at short-notice. We will do our best to notify you of any change of venue at least 48 hours before the hearing

**Reminder!** The appeal number should be used whenever you contact SEND Tribunal about your appeal.

## The Local Authority's response

The LA (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 SEND Tribunal.

If you do not receive the response from the LA within eight weeks of your appeal being registered, you should notify SEND Tribunal in writing. The Local Authority will have the same timetable to send further information and evidence as is set out in your case directions. The response from the LA must say whether or not they oppose the appeal and, if they do, they need to explain why in which they will need to give facts.

If the Local Authority does not send a response, SEND Tribunal can do a number of things, including barring them from taking further part in the appeal. Before deciding what to do, SEND Tribunal will write to the Local Authority asking for an explanation for their failure to respond, or failure to respond in time. A tribunal judge will consider any reply the Local Authority gives and will decide what should happen. If the Local Authority is barred from further involvement, SEND Tribunal will decide whether your case can be dealt with on the papers or whether there should be a hearing, which the Local Authority would not attend.

Local Authorities are required by SEND Tribunal to provide children's views on the issues in the appeal wherever possible, or an explanation why they have not been provided.

The Local Authority may also apply to strike out (bring to an end) your appeal if they believe it is a case that the Tribunal cannot consider. If that happens, the Tribunal will send you a copy of the Local Authority's application and ask for your written comments, giving you the opportunity to explain why you think your appeal should continue.

### What happens if the Local Authority does not oppose the appeal?

This will depend on the issues in your appeal. If the Local Authority agrees to change the contents of the EHC Plan and you are satisfied with the outcome, you can withdraw the appeal or ask the Tribunal to order the Local Authority to change the EHC Plan in the way you have agreed by making a consent order.

If the appeal is about a decision not to carry out an EHC Needs Assessment or reassessment, not to issue an EHC Plan, not to change the school named in an EHC Plan that is over one year old or to no longer maintain an EHC Plan, and the Local Authority does not oppose it, the appeal will automatically come to an end. The Local Authority will have to do what they have agreed to do within a fixed time limit.

# The hearing

The SEND Tribunal will take place in front of a panel consisting of; a judge and one or two specialist members. Although SEND Tribunal hearings are a legal process it is as informal as circumstances allow.

You are not required to attend the SEND Tribunal hearing however you may want to consider attending, as the panel will want to ask you relevant questions. However if you decide not to attend a paper hearing will be considered if both parties (you and the Local Authority) consent to a paper hearing.

At least 10 working days before the hearing you will be informed of the venue and exact time of the hearing. Plan your route in advance as the venue may not be held locally to you.

Contact your local SENDIASS to find out more about the SEND Tribunal hearing process.

## Can I claim expenses?

You and your witnesses are entitled to claim travel expenses to attend the hearing, as well as your friend or relative who is looking after your child.

However before you travel make sure you have told the SEND Tribunal if you have particular needs that will require you to take a taxi. Otherwise use public transport unless it is not available.

Witnesses can also claim back a fixed amount for loss of earnings.

Get details about claiming expenses from your local SENDIASS.

# After the hearing

You should receive the decision of the SEND Tribunal within 10 working days after the hearing.

## How soon will the decision be put into practice?

- The Local Authority should carry out the decision within a fixed period.
- To start the assessment or reassessment process – four weeks
- To make a EHC plan – five weeks
- To amend a 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

## What can I do if I disagree with the decision?

You or your representative can make an application for permission to appeal the decision made in the First-Tier Tribunal by making the following applications:

- Apply for permission to appeal if you think the decision made was wrong in law.
- Ask SEND tribunal to review the decision because there has been a change of relevant circumstances since the decision was made.
- Ask for the decision to be set aside in certain circumstances.
- The three applications are explained in detail in the guidance sent with your decision by the SEND Tribunal.

For more information and guidance on how to appeal against the decision contact your local SENDIASS.

# Get support

Visit the links below to get support with appealing at the SEND Tribunal.

<https://www.ipsea.org.uk/appealing-to-the-send-tribunal>

Find out more about the SEND Tribunal appeal form here

Find out more about the SEND Tribunal hearing here

## Contact Us

Special Educational Needs and Disabilities Information Advice and Support Service (SENDIASS) provides free impartial, confidential and accurate information, advice and support about education, health and social care for children, young people and their parents on matters relating to special educational needs and disability.

Contact your local SENDIASS to find out more about SEN Support in schools.

Visit our SENDIASS website: <https://www.kids.org.uk/sendiasm>