

## SEN factsheet

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### I am unhappy about the decision of the Special Educational Needs & Disability Tribunal

*In most cases a Tribunal decision will fully explain the reasons for its decision and parties will understand the basis for the decision, even if they do not necessarily agree with the outcome. However, if there has been an error in law or in the process, it is possible to challenge the outcome of your appeal.*

The following is addressed to parents of children and young people but is intended as guidance for anyone involved, including the young person themselves. "Young people" is a phrase which the Children and Families Act 2014 has introduced which means a person between 16 – 25 years of age, in education and with mental capacity.

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If you believe that the Tribunal made an error in its decision, it is possible to challenge that decision in very specific circumstances. The three possible forms of challenge are:

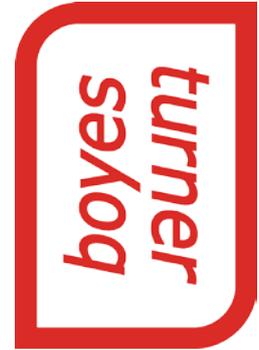
- Review
- Appeal
- Set aside the decision

Each of the steps available for challenging a Tribunal's decision can be very complex and it may be beneficial for you to seek specialist advice on the issue before taking it further. It is important to understand that you cannot challenge the decision of the Tribunal simply because you do not agree with the decision.

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### Appeal

The Upper Tribunal (Administrative Appeals Chamber) can hear appeals against a decision made by the Special Educational Needs and Disability Tribunal (SENDIST).



Before appealing to the Upper Tribunal you must ask for permission to appeal from the Tribunal that dealt with the initial appeal.

Permission to appeal can be given for any of the following reasons:

- Applying the wrong law, or incorrectly interpreting the law.
- Not following the correct procedures.
- Having no evidence or not enough evidence to support a decision.
- Inadequate reasons are given for a decision.

The time limit for asking the SENDIST for permission to appeal to the Upper Tribunal is **28 days** from the date of the judgement.

If a SENDIST judge refuses to give you permission to appeal, you can apply direct to Upper Tribunal for permission. You must do so within **one month** of the decision of the SENDIST judge refusing you permission to appeal.

If you are given permission to appeal by a SENDIST judge you must send in an appeal to the Upper Tribunal within **one month**.

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## Review

When the Tribunal receives an application for permission to appeal, the decision will first be reviewed by the judge who made the original decision. If the Tribunal judge decides at that stage that there was an error of law in relation to all or part of the decision, they may grant an immediate review. Usually both parties will be asked to make further comments to the Tribunal and a further hearing may be required.

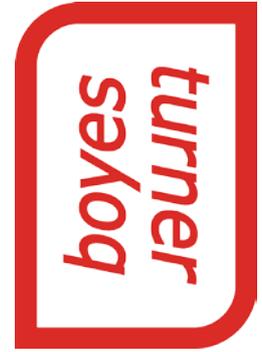
The parties must be notified in writing of the outcome of any review and any right of appeal which arises as a result.

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## Review – change of circumstances

You are also able to independently ask the Tribunal to review the decision if circumstances have changed.

This is quite a difficult request to successfully argue because the decision needs to be one which would materially be affected by a change of circumstances. For example, a decision taken by the Tribunal



about a school placement may be changed if the CYP, soon after the hearing, develops significant additional needs, such a blindness, which the school would not be able to cater for.

An application for a review must be made within 28 days of the original decision being made.

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## Decision to set aside

The Tribunal has the power to set aside a decision and to re-make the decision if the Tribunal considers that it is in the interests of justice to do so and one or more of the following conditions below are satisfied:

- A document relating to the proceedings was not sent or was not received at an appropriate time.
- A document relating to the proceedings was not sent to the Tribunal at an appropriate time.
- A party or a party's representative was not present at a hearing related to the proceedings.
- There has been some other procedural irregularity in the proceedings.

An application to set aside must be made in writing within 28 days of the date of the decision being challenged.

Challenging the decision of the Tribunal can be complicated and may result in you having to pay the costs of the local authority if your application is unsuccessful. Before you start any proceedings you should speak with a specialist solicitor.

If you have any questions or require advice, please contact the Special Educational Needs team on **0118 467 6547** or [senexpertsolicitors@boyesturner.com](mailto:senexpertsolicitors@boyesturner.com). Appeals to the Tribunal can be extremely difficult and expert advice should always be sought.

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