

Appeals Process

The Tribunal is a specialist Tribunal which is set up to determine disagreements about SEN provision. What the Tribunal can look into is:

- A refusal to conduct an EHC needs assessment.
- A refusal to issue an EHCP.
- A refusal to conduct a reassessment.
- A refusal to amend an EHCP after an Annual Review.
- The description of your CYP's special educational needs (SEN) within the EHCP – Section B.
- The support detailed to cater for your CYP's SEN within the EHCP – Section F.
- The placement named within the EHCP – Section I.
- A decision to end your CYP's EHCP.

Mediation must always be considered before appealing and may be a quick way of resolving a relatively straightforward disagreement, especially where new information has come to light since the local authority made its decision.

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.

Before the appeal

Before you are able to start an appeal with the Special Educational Needs and Disability Tribunal (SENDIST), you will have to at least consider mediation. This will involve speaking with a mediator who will explain the mediation service to you.

Within any decision letter that the local authority sends, it is required to confirm which local mediation service it has decided to work with.

Whether or not you go through mediation impacts on when you need to tell the Tribunal that you wish to appeal.

- If you do not want to go through mediation, you will be issued with a Mediation Certificate three days after confirming this with the mediation service.

You will then have one month (or two months from the date of the decision letter enclosing the final EHCP, whichever is the later date) to send the appeal form to the Tribunal along with a copy of the Mediation Certificate.

- If you do want to go through mediation, the local authority must ensure that the mediation process is completed within 30 days. A Mediation Certificate will be issued three days after completion.

You will then have one month (or two months from the date of the decision letter enclosing the final EHCP, whichever is the later date) to send an appeal to the Tribunal, if you still want to, along with a copy of the Mediation Certificate.

For more detailed information about mediation, see our factsheet “Mediation”.

The decision about whether or not to mediate is an important one and should be taken with a full understanding of the strength of the case and how to approach mediation. Because of this it is best to seek legal advice before making any final decisions.

Who can appeal?

The following people can appeal:

- For a child from 0 – 16 only the parents can appeal.
- Young people from 16 – 25 can appeal themselves if they have capacity.

Young people can register an appeal in their name but can also have their parents’ help and support if needed.

Starting the appeal

If you decide to appeal, you will need to send a completed appeal form to the Special Educational Needs & Disability Tribunal (SENDIST). The relevant appeal form is available from the website: www.justice.gov.uk/forms/hmcts/send

This is a very brief form and is designed to be user friendly. You will need to be prepared to send to the Tribunal far more than the appeal form. In order to support any appeal you will need to make out legal arguments and provide substantive evidence to support those arguments.

The appeal form is the basis of your appeal. It is very important for the success of the appeal that you complete it correctly and provide as much evidence as possible. Trying to change the appeal, evidence or arguments after the appeal form has been sent in can be very difficult and can lead to the appeal itself being brought to an early end by the Tribunal.

As it can often be a difficult and daunting process to set out the legal arguments and to know which experts to approach, it can be very helpful to seek expert legal advice on these issues before sending an appeal into the Tribunal

Health and Social Care within the Plan

The Tribunal cannot consider the health and social care aspects of the EHCP in the same way as education. For education, the Tribunal can make an order but for health and social care it is limited to making non-binding recommendations.

An appeal including health and / or social care is known as an Extended Appeal.

The Tribunal can make health and social care recommendations that relate to the child/young person's special educational needs (SEN) in the following types of appeals:

- LA refusal to issue a Plan
- Content of a Plan (description of SEN, educational provision and name and type of school – Sections B, F and I)
- LA decision not to reassess following a request to do so
- LA decision not to amend or replace the Plan following a review or reassessment
- LA decision to end the Plan

The Tribunal can only make recommendations where there is an education element to the appeal i.e. not where the issue is only related to health and/or social care. This means that if the education element of the disagreement is resolved through mediation, then an appeal against just the health and/or social care elements will not be permitted.

If the Tribunal makes a recommendation it must send a copy of it to the responsible commissioning body (health and/or social services). Health and/or social services must respond in writing to parents or the young person and the local authority within five weeks, setting out the steps that will be taken and reasons why any of the recommendations will not be followed. The local authority must send a copy of the response to the Secretary of State within a week of receipt.

An overview of the process

Once you have sent your appeal form to the SENDIST, a timetable for your appeal will be issued. These are called 'Case Management Directions'.

The following directions are those typically made by the Tribunal:

- **LA response / Attendance form**

This is normally due six weeks after you start the appeal. This is the deadline for the local authority to provide its initial response, with reasons and evidence, to your appeal.

The attendance form confirms who will be attending at the final hearing. Whilst you will be required to send the attendance form long before the hearing, typically, provided witnesses are confirmed no less than one month before the final hearing, there is usually no difficulty with their attendance. The Tribunal does, however, have the power to refuse to admit any witness or representative. Witnesses are generally restricted to three for each party. A request must be made if you want more than three witnesses.

- **Further evidence**

This is normally eight - nine weeks after you start the appeal. It is the deadline by which the case should be fully formed and the Tribunal should have all the evidence and arguments that you and the local authority wish to make.

This is the key date for the purposes of expert evidence and must be adhered to. It is possible to send evidence to the Tribunal after this date but you will have to make an application to the Tribunal for the evidence to be admitted. This can often be very difficult.

- **Working document**

If you are appealing against the content of your Plan, you will be required to work with the local authority to decide on areas of disagreement and draft a 'working document' which the local authority is required to send to the Tribunal a couple of weeks before the hearing. The working document is a word document of your CYP's EHCP which sets out all requested amendments using key as directed by the Tribunal. This is the document that the Tribunal will work through on the day of the hearing.

- **Bundles**

The local authority is responsible for preparing the bundle for the final hearing. This will contain all of the legal arguments and the evidence that you and the local authority want the Tribunal to consider.

The bundles are normally sent out two weeks before the final hearing. The bundle is normally separated into three sections; the parent's case and evidence, the local authority's case and evidence and the various applications received and Orders made by the Tribunal in the lead up to the final hearing.

- **Final hearing**

The timetable at the start of the appeal will confirm when the hearing will be. From April 2020 hearings have been held remotely.

If a matter does go to hearing, it is strongly advisable that you have experts to attend with you. You are also advised to have a solicitor who will be able to present your case and make legal arguments on your behalf. The hearing can be very draining and emotionally charged and parents often struggle with it on their own.

The length of the hearing very much depends on the complexity of the issues that are being raised. Most hearings do not last more than one day, but can be longer depending on the amount of evidence and the complexity of the matter.

Please note that the Tribunal automatically considers appeals against a refusal to assess on papers only. If you want an oral hearing, you will need to make a specific application for it.

- **Timescales**

The whole process, from the point you tell the Tribunal you want to appeal to final hearing, normally takes around 12 – 14 weeks. If the matter is urgent, for example it relates to a move to secondary school, the appeal can be expedited upon request but agreement is dependent on the Tribunal's capacity.

Tribunal judges are actively told not to make a decision on the day. It would only be in very exceptional circumstances for a decision to be made on the day. Typically, the decision will follow two weeks after the hearing.

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

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