



Your Guide to the SEND Tribunal

This guide is for appeals against the Local Authority's
Refusal to undertake an EHC Needs Assessment

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Your right of appeal

Have you received a letter confirming the Local Authority's decision not to proceed with an EHC needs assessment? If so, then yes, you will have a right of appeal. There is a requirement for you *to consider* mediation before you can lodge an appeal with the tribunal. If, after consideration, you decide to not enter into mediation, you should contact Global Mediation (the contact details will be on the letter) to request a mediation certificate.

Once you have received a mediation certificate you can lodge your tribunal appeal. You have 2 months from the date of the Local Authority decision letter, or one month from the date of the mediation certificate in which to lodge your appeal, whichever is the latest.

Your appeal schedule

The appeal process usually takes 20 weeks. Whilst the Tribunal aims to follow this timescale,

please be aware that your exact dates will be listed on the appeal registration letter sent to you to confirm that your appeal has been lodged.

Week -2	The appeal is lodged
Week 0	The appeal is registered
Week 6	The Local Authority must respond to the appeal
Week 16	All further evidence must be submitted
Week 17	The Tribunal case manages the appeal
Week 20	The Tribunal hearing will take place
Week 20+2	The Tribunal decision is issued

Lodging your appeal

To lodge an appeal with the Tribunal you will need to complete form **SEND 35a**. The form can be found at:

<https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>.

The appeal form is broken down into 11 sections:

Section 1: Who is the appeal about? – These are details about the child or young person.

Section 2: Reasons for appeal – In this section you need to explain what special educational needs the child or young person has, or any that you don't feel have been fully identified yet, and also about why you think your child or may need an EHC plan. Think about what support and provision your child might need that might be over and above what a school can provide from within its resources.

Section 3: Making the appeal – Details about the LA's decision letter and mediation certificate.

Section 4: Deciding your appeal – Appeals against a 'refusal to assess' decision will automatically be decided on the written evidence submitted rather than there being an oral or 'face to face' hearing. If you do not agree to this and would like to attend an oral hearing instead you will need to explain your reasons in this section.

Section 5: Who is making the appeal? – If the child is under 16 then the appeal will be made by parents or the persons with parental responsibility. A young person aged 16-25 will make the appeal themselves, unless they do not have the mental capacity to do so.

Section 6: Who else is involved in the appeal? – Details of any person or organisation that shares parental responsibility. If a young person is bringing the appeal, they may wish to have an advocate to help them to express their views. Details for this go in this section. If you wish to appoint a legal representative (solicitor) then their details also go in this section.

Section 7: The hearing- your needs and requirements – Details regarding any special needs that the person making the appeal has that need to be taken into consideration when the hearing is being arranged.

Section 8: Checklist – you must make sure that you have completed this and enclosed all the listed documents before you submit your form

Section 9: Please sign below – Make sure the form is signed before you submit it.

Section 10: Sending us your appeal – This is details of where to send your appeal form

Section 11: Evidence to be considered in the appeal – Provide details of all the evidence and documents you are sending to support your appeal.

What to send in with your form

- Copy of the letter from LA informing you of their decision
- The mediation certificate
- Evidence to support your appeal

Do not send original documents; send photocopies and keep a copy of everything you send.

You can choose whether to post or email your application although the Tribunal does prefer applications via email where possible. Once you have sent off your appeal paperwork the Tribunal will contact you to confirm the appeal has been lodged. This is usually done by email and will include key dates that you can record on the Tribunal Support Sheet at the back of this document.

The Local Authority's Response to the appeal

The SEND Tribunal will send the appeal via email to the Local Authority and ask for their response. The Local Authority will either:

Concede the appeal.

This means the Local Authority will agree to proceed with the EHC needs assessment.

Oppose the appeal

This means the Local Authority does not agree to proceed with the EHC needs assessment and the tribunal process will continue.

The Local Authority will send their response to you and the Tribunal and must submit this within 30 working days of receiving your appeal documents from the SEND Tribunal.

PLEASE NOTE: The SEND Tribunal do not send any documents directly to the local authority Tribunal Officer at any point during the process so remember that you are responsible for sending any information to them. All information sent to the Tribunal should be copied and sent to the local authority.

Evidence and witnesses

Although you've got plenty of time until the final evidence deadline you should start thinking about this as early as possible. You may already have additional evidence that wasn't submitted when the request for the EHC needs assessment was sent to the Local Authority.

Witnesses

Witnesses should be able to give evidence relevant to your case. For a written hearing, you can ask your witnesses to provide an additional written report. If you request a face to face hearing, you can also ask your witness to accompany you to the hearing to give oral evidence on the day. This could be someone from the educational setting (SENCo or Head Teacher), a professional who has completed an assessment with your child/young person (Educational Psychologist or Speech and Language Therapist). The maximum number of witnesses is usually three: it is possible to apply for permission to call more, but good reasons have to be given.

There is guidance for being a witness at a SEND Tribunal and this can be found at: <https://www.gov.uk/guidance/send-tribunal-if-youre-asked-to-be-a-witness>

The Tribunal will expect witnesses to:

- Use ethical, sound, evidence-based standards, and principles
- Give clear and unambiguous instructions
- Use precise, factual and objective information that they can verify
- Identify clearly what is and is not within their own knowledge
- Accurately identify the needs that are in the child's interests – not influenced by a party's wishes, time constraints or lack of resources
- Consider any previous or planned assessment relevant to their area of knowledge and practice to prevent the possibility of invalidating test scores
- Give advice that is justifiable and supported by evidence, and is based on the child's needs
- Consider any facts that may affect the advice they give
- Be specific about any recommendations about provision, unless there are clearly stated reasons for not doing so
- Identify any hypotheses (as opposed to facts or opinions).

Use the grid in the Tribunal Support Sheets at the back of this document to note down ideas about what evidence you've got, what you might need and who you may like to call as a witness

Forms

Request for Change form

If at any stage of the tribunal process you wish to make any changes to your appeal such as requesting:

- ✳ an extension of time to comply with a direction
- ✳ a change to the final hearing date
- ✳ permission to amend grounds of appeal

You will need to complete a form called '**SEND7 Request for Change**'. This can be found on the SEND Tribunal website in the forms section.

Before completing this form you will need to contact the Local Authority to make sure they have no objections to your request and you will need to include their response on the form. If you have not consulted the Local Authority first and do not include their response, then your request may be returned to you.

Hearing Preparation

The Bundle

At least 10 working days before the hearing date the Local Authority will send you and the tribunal a bundle of all the documentation submitted during the tribunal appeal. You need to go through the bundle thoroughly to ensure that no documents are missing.

Telephone case management hearing

In some appeals there may be a telephone case management hearing that takes place before the final hearing. This is to check whether there needs to be any judicial input to make sure the hearing runs smoothly. There might be discussions about:

- ✳ What agreements have already been made with the Local Authority and whether your position has changed
- ✳ Whether it is necessary to call all of your witnesses
- ✳ If there is further evidence required and whether the hearing needs to be postponed in order to get this

You can prepare for this by reading through all the evidence you have received and making sure you know what has and hasn't been agreed already.

The Hearing

The tribunal panel members are a tribunal judge who is legally qualified, an SEN and/or disability specialist member and a health and/or social care specialist member.

For a paper hearing, you will be given a timescale for when this will occur e.g. *"The appeal will be considered on the papers between **30/04/2019** and the **14/05/2019**".*

Post Hearing: what happens next?

The Tribunal, having considered all the relevant and available evidence will determine whether the Local Authority's decision is compliant with both the relevant law and the SEND Code of Practice and, within 2 weeks, issue an order to the LA.

Once the decision is issued, the Local Authority **must** carry out the order within four weeks.

If the Local Authority does not keep to the order within those timeframes, you can apply to the Secretary of State for Education or the High Court to enforce it. You can also make a complaint to the Local Government Ombudsman.

What if you do not agree with the Tribunal decision?

When the decision is issued, it will include a leaflet setting out in detail your right of appeal.

If you think the decision is wrong in law, you can appeal to the Upper Tribunal, but you must first ask for permission to appeal. Guidance on how to apply for permission will be included with your decision letter. The Local Authority can also appeal to the Upper Tribunal if they do not agree with the Tribunal decision. It is important to remember that you won't be able to appeal the decision if you are unhappy with the outcome, only if you believe that the decision has not been made in line with the law.

Your legal representation options

Most parents do not have any legal representative at their SEND Tribunal appeal. If you would like support for your case, you may want to consider the following options:

IPSEA

You can get advice about your appeal from IPSEA's Tribunal Helpline. This service is not available if you are already being supported by a solicitor or other advocate. As part of this call, IPSEA also assesses whether you need casework support from the Tribunal Support Service.

You can find more information and the booking system for the SEND Tribunal helpline at www.ipsea.org.uk

Legal Aid

The type of legal aid available in the SEND Tribunal is known as 'legal help'. A parent or young person eligible for this will receive support from a solicitor to prepare the case. It does not cover having a representative to attend the hearing. If you are on a low income or receiving certain types of benefits, you may be eligible for this legal help.

For more information, the legal aid eligibility key card and the online application form please visit the IPSEA website detailed above.

Solicitor

If you decide you would like a legal representative at the hearing, you will need to pay for a solicitor. Whilst we cannot recommend specific solicitors, here are some firms which have a specialist SEND tribunal department:

- Irwin Mitchell www.irwinmitchell.com
- HCB Education Law Solicitors www.hcbgroup.com
- Langleys www.langleys.com
- SEN Expert Solicitors www.senexpertsolicitors.co.uk

Frequently asked questions

1. Where do I get the forms? Will PATT SENDIASS complete them for me?

All forms relevant to the SEND Tribunal can be found at:

<https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>

You need to fill out the forms yourself, but PATT SENDIASS can support you to do this.

2. How do I change the date when the additional evidence needs to be submitted?

If you know that an assessment or report will not be available until after the evidence deadline then you need to let the SEND Tribunal know and seek an extension (using the "Request for changes" form). It is possible to apply for late evidence to be submitted after this deadline, but it will be up to the SEND Tribunal whether this will be accepted.

3. How will I find out who the LA's witnesses are?

The LA is required to complete an attendance form for a face to face hearing and you will find out this information when you receive the appeal bundle at least 10 working days before the hearing.

It can be known for the LA to bring different witnesses and different representatives than those listed on the attendance form. You should be aware that this can happen.

4. Can I change my appeal after I have submitted my original paperwork?

Once the appeal has been registered, SEND Tribunal must agree to any changes to the grounds of appeal. A request must be made in writing on the "Request for changes" form. On the form, set out 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.

5. What happens if the local authority does not oppose the appeal?

If the LA concedes at the time of their initial response, the Tribunal will end, and a tribunal order will be issued detailing what the LA is instructed to do.

If the LA concedes during any other point during the process, there will be a conversation between you, the LA, and the tribunal regarding how the appeal will be closed.

If the appeal is about a decision not to carry out an EHC Needs Assessment or re-assessment, 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 comply with fixed time limits detailed in the issued tribunal order.

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.

5. Can I withdraw my appeal?

If you and the Local Authority come to agreement before the SEND Tribunal Hearing you may wish to withdraw your appeal. If you inform the SEND Tribunal that you want to withdraw, permission will usually be granted if it is more than 3 weeks before the hearing. The application must be made on the "Request for changes" form. A request to withdraw the appeal less than 15 working days before 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.

6. What if the Local Authority does not provide a response?

If the Local Authority does not send a response by the deadline, the 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.

Glossary

Appellant/ Claimant	The party who brings their claim against the Respondent in certain cases
Barrister	A qualified lawyer. They are usually asked to work on cases by solicitors. A barrister may also be called 'counsel'.
Bundle	All the documents submitted in the appeal will be issued in one bundle marked into sections to identify the parents' evidence, the LA's evidence, requests, directions and orders.
Clerk	A clerk is one of the administration members of staff within the tribunal service. They will handle letters, emails and phone calls but cannot give legal advice.
Evidence	The means by which something is proved. Written evidence may be statements, reports or other documents. Oral evidence is the spoken evidence of a witness in court.
Judgement	The decision of the tribunal
Non-binding recommendations	Recommendations that are not legally binding but expected to be followed



Tribunal Support Sheet

Dates and Deadlines

Important Dates & Deadlines

Date on Local Authority decision letter:	
2 month deadline for appeal	
Date of mediation certificate	
1 month from mediation certificate	
Date letter received/accessed via Objective Connect	

Tribunal Dates and Deadlines

Date appeal lodged (date on letter from Tribunal)	
Deadline for the LA to respond to the appeal	
Deadline for sending in the parent/young person attendance form	
Deadline for sending any extra information and evidence	

Tribunal Documents Submission Checklist

Document	tick if included
Copy of the letter from LA informing you of their decision	
The mediation certificate	
Evidence to support your appeal	

The Tribunal Appeal Schedule

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