

Appealing to the SEN Tribunal

Right of Appeal

The **SEND Code of Practice** says that parents and young people can appeal to the Tribunal about:

- A decision by a local authority **not to carry out** an EHC needs assessment or re-assessment.
- A decision by a local authority that it is **not necessary to issue** an EHC plan following an assessment.
- The description of a child or young person's **SEN specified** in an EHC plan, the **special educational provision specified**, the **school or other institution** or type of school or other institution (such as a mainstream school/college) specified in the plan or that no school or other institution is specified.
- An amendment to these elements of the EHC plan.
- A decision by a local authority **not to amend an EHC plan** following a review or re-assessment.
- A decision by a local authority to **cease to maintain** an EHC plan (11.45).

There are strict deadlines involved if you are going to make or 'lodge' an appeal. The appeal will need to be received by the SEND Tribunal service within two months of the original decision being sent by the local authority, or within one month of the date on the mediation certificate whichever is the later.

You can find out more about appeals to the Tribunal in the SEND Code of Practice sections 11.39 to 11.55.

We can explain the appeal process to you and provide impartial advice and support.

The right of appeal moves to the young person when they reach the end of compulsory school age (the last Friday in June of the academic year in which they turn 16).

It is a good idea to continue talking to the local authority when you disagree. It may be possible to resolve your issues without going to appeal.

Share with the local authority what it is you disagree about. Explain what you would like changed. You can continue talking to them even if you decide to appeal.

Mediation

For most types of appeal, you need to consider mediation. Mediation is an informal way of settling disagreement with the local authority.

The mediation service is free and confidential. In Cornwall the service is provided by Global Mediation.

When you first contact the mediation service, they will give 'mediation advice'. After mediation advice you can decide whether you want to go to a mediation meeting with the local authority. You do not have to go to a mediation meeting, but it can be very helpful to do so. If you decide it's not for you, they will issue you with a certificate so that you can lodge your appeal.

You do not have to consider mediation first if the appeal is ONLY about the name of the school, or college, or the type named on the plan, or the fact that no school or other institution is named.

An independent mediator from Global mediation will arrange and run the mediation meeting. When the meeting has finished the mediator will issue you with a mediation certificate **within 3 working days**. You will need this certificate to register an appeal to the SEND Tribunal.

Making an Appeal

Will it cost me anything?

There are no costs to you in making an appeal, unless:

- You choose to have legal representation

- A witness you call charges a fee.

If you decide to have legal representation, it is likely the local authority will also instruct a lawyer.

You may be entitled to Legal Aid. Find out more at www.gov.uk/check-legal-aid

Which sections of the plan can I appeal?

You may **only** appeal these educational sections in an EHC plan:

Section B - Special Educational Needs

Section F - Special Educational Provision

Section I - The school or setting named, or that no school or setting is named

If you are appealing the school or setting named (or that no school or setting is named), we usually recommend you consider appealing sections B & F (needs and provision) as well.

Health and Social Care Sections in a Plan

If you lodge an appeal with the SEND Tribunal about any of the education sections (B -needs, F -provision or I -school named) in a plan, you may now ask the tribunal to consider the sections relating to health and social care needs and provision.

It is worth remembering that any health and social care provision which educates or trains a child or young person should be specified under 'Special Education Provision' (section F) in an EHC Plan. This might include speech and language or occupational therapies for example.

You can include in your appeal where you disagree with the health and care needs or provision, or perhaps where you believe health or care needs have not been fully identified as part of the EHC needs assessment.

How do I Start my Appeal?

You can lodge an appeal, either within two months of the original decision being sent by the local authority, or within one month of the date on the mediation certificate whichever is the later - unless this is a section I appeal only. You will need to complete the right 'Application for appeal' form and send it with the correct documents to the Tribunal service,

There is also a [SEND Tribunal Guide](#) 'How to appeal a SEN decision'.

Form SEND 35 is for appeals to do with an **existing EHC plan** or where the local authority have made assessment but refused to make a plan.

Form SEND 35a is for appeals to do with a **'refusal to assess'** for an EHC Needs Assessment. You can send your appeal in the post or by email marking it 'New Appeal'. The Tribunal postal address and email address will be on the appeal form you complete.

All the SEND Tribunal forms and guidance can be found at:
www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms

With your completed form you will need to send;

- Your decision letter from the local authority.
- Your signed mediation certificate.
- Additional pages if your reasons for appeal do not fit in the boxes on the form.
- A copy of the EHC plan with its appendices if your appeal is about an existing plan.

When writing your appeal:

- Be sure to include the views of your child or young person.
- Organise your appeal so that it will be easy for the panel to read and understand your key points.
- Use paragraphs with headers and number your points, include a page which lists all your supporting documents (contents or appendices). Send copies of any documents, not the originals.



- Within your appeal refer to evidence that backs up your points.
- Link your points to relevant law where you are able.
- It can be helpful to write an opening summary or bullet point your key issues.
- Remember the panel do not know your child, so make sure you include all their needs but...

- Be as concise as you can, particularly with background history. Stick to needs that are still relevant.

If you are appealing the contents of a plan and/or the school or setting named, please see our template on pages 7-9 for our tips.

What happens next?

- The appeal will usually be registered by SEND Tribunals within **10 working days**. This may be longer when they are busy.
- They will write to you with a **hearing date**, and your **deadlines** for submitting further documents or evidence.
- They will provide you with an **appeal reference number** which you must use in any further correspondence with SEND Tribunals.
- They will send the local authority a copy of what you have sent. The local authority will be given **30 working days** to respond.
- Use this time to gather any further evidence. You can request information or a document from the local authority or school. If you have asked for information or a document important to your case and have been refused, you can ask the SEND Tribunal to make an order requesting the information. You will need to complete a 'Request for change' form.
- To let SEND Tribunals and the local authority know who will be attending the hearing, you will need to complete an 'Attendance form' and include details of any supporters, representatives or witnesses that have agreed to attend with you.
- If you submit copies of further documents or evidence, you must also send a copy to the local authority. Make sure you do this by the deadline given, as late evidence may not be accepted.
- At least **10 working days** before the hearing you will receive a copy of the full appeal bundle. Details of the time and venue for the hearing may be sent later.



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- The appeal will be considered by a panel - a tribunal judge and up to two specialist members.
- The decision will be communicated to you and the local authority, within **10 working days** of the hearing.

The Tribunal Timescale

It can take up to 20 days for a Tribunal Application to be registered.

On the day that the application is registered with SENDIST the **12-week timescale** begins:

Week 0	The appeal is registered, and case directions are sent to the parent or young person
Week 6	LA Response/LA Attendance Form and an <u>electronic version of the EHCP must be sent from</u> the LA to Tribunal and the parent/young person.
Week 7	Parent/Young Person Attendance form due to be sent to LA and Tribunal.
Week 8	Final evidence to be provided for both parties.
Week 11	The LA must send out a bundle to the parent/young person and the Tribunal.
Week 12	The Hearing

The LA may seek to vary directions, but the LA must ask the parents/young person their views on variations they are seeking before completing a Request for Changes Form (SEND 7).

Use the appeal reference number in any correspondence with SEND Tribunals.

Check any letters or emails from **SEND Tribunals** carefully as there are strict **submission deadlines** within this legal process.

'Refusal to assess' appeals are usually **'paper hearings'** unless you request an oral hearing. **A paper hearing means you will not need to attend.**

The 'Working Document'

When the local authority responds to an appeal about the contents of an EHC plan, they will usually include a **'working document'**. This is simply a copy of the final EHC plan.

You will be able to **edit** this document, showing the proposed changes you would like to see made. You can then **return it** to the local authority for **review**.

This should be an ongoing process which enables agreement to be reached ahead of the hearing, for example the local authority might agree with some of your proposals but not all.

Building Your Case

For appeals about the contents of a plan, check that all the special educational needs have been captured in section B and that each need has a corresponding provision in section F.

It can be helpful to highlight each identified need and each suggested provision within every report you have. Do the same within the EHC plan to see if all the relevant information from the reports has been included in the plan.

When drafting your appeal, it can be helpful to use headers to keep you on track and make it easier for the tribunal to see your issues, see below for some ideas: *(Sections 2 to 6 are only relevant for appeals about the school named)*

Notes:

- **Indexing page numbers makes it easier to locate your points (e.g. pages 1-3)**
- **Use numbers to identify each of the key points under each heading**

Sections	Issues
Summary Begin with a short summary of the background and lead up to the appeal. You could include a photo of your child.	
1 Proposed changes to sections of the EHC	Use headings to organise your appeal. B Special Educational Needs C Health needs D Social care needs F Special Educational Provision G Health provision H1 & H2 Social care provision



	<p>Refer to supporting evidence where you can, for example:</p> <ul style="list-style-type: none"> • Your child/young person's views • Progress reports • IEP/support plan/pupil passport/provision map • Home/school diaries • Assessment/specialist reports or meeting notes • Exclusion letters/reports • Letters/emails from setting/local authority/health/specialist • Examples of school or homework (can be helpful where rate of progress is in dispute) <p>Explain where to find the information in your supporting evidence for example 'Page 5 of the Educational Psychologist's report says...'</p>
<p>2 Section I, Placement (school, college or setting named)</p>	<ul style="list-style-type: none"> • Provide an overview of why you are appealing about the school named. • Link to any relevant law. • Explain how you hope the outcome/s for your child will be achieved if you were successful with your appeal
<p>3 Suitability of the school (or that no school) named in the plan</p>	<p>Consider the reasons the local authority refused to name your preferred school and explain why you disagree with them.</p> <p>List your concerns as to why this school will not be suitable for your child and index (3a, 3b, 3c etc.)</p> <p>Point to supporting evidence where you can, for example:</p> <ul style="list-style-type: none"> • What the EHC plan says (or you would like it to say) your child's needs and provision are. • Your child or young person's views. • The range and nature of the needs of other children in the school/year/class. • The curriculum followed, qualifications offered and progression/outcomes. • Behaviour policy. • Progress reports (IEP/pupil passport/provision map/behaviour or exclusion record). • Assessment/specialist reports showing the areas of difficulty, levels and rate of progress, any concerns over mental health and wellbeing. • School prospectus and latest Ofsted report. The Tribunal panel will expect these documents as part of your evidence. There may be information in these documents which supports your views.

<p>4 Suitability of your preferred school or setting.</p>	<p>The Tribunal will need confirmation that you have contacted the school or setting about admitting your child, and their response. If you are appealing for an Independent setting, you will need a written offer of a place before the hearing.</p> <p>List your reasons for your preferred school and index (4a, 4b, 4c etc.) Point to supporting evidence where you can, for example:</p> <ul style="list-style-type: none"> • What the EHC plan says (or you would like it to say) about your child's needs and provision. • How your child or young person would benefit. • The school or setting's own website and their SEN information report - the type of setting, specialism, experience of teaching children with similar SEN – specifically link it to your child's needs where you can. • The curriculum followed, qualifications offered and progression/outcomes. • Behaviour policy and how it may suit your child. • The range and nature of the needs of other children in the school/year/class. • Information you have gathered from visiting the school -pinpoint what it is that makes you feel it is the right school or setting, the environment, the children you saw when visiting and how they were being taught, the classes, or the staff/facilities available etc. • Use assessment/specialist reports or meeting notes to evidence suitability. • School prospectus and latest Ofsted report.
<p>5 Incompatibility with the efficient education of others</p>	<p>Include the response from the setting and why you disagree:</p> <ul style="list-style-type: none"> • Explain how you believe the school/setting could accommodate one more child/young person • Include details of school or class numbers and in previous years if they have gone over their numbers.
<p>6 Incompatibility with the efficient use of resources (Costs)</p>	<p>Explain what you have done to find out about costs, including transport.</p> <p>Where the cost of your preferred school is greater, include any evidence about any cost savings (such as health therapies that would not be needed) if they were to attend your chosen setting.</p>
<p>7 Outstanding information at time of submission</p>	<p>List any documents or information that you have not been able to obtain before submitting your final evidence. Include details of any requests for this.</p>
<p>8 List of Appendices (documents and evidence)</p>	<p>Supporting evidence can be included when you make your appeal, but you will be given a deadline by which to submit final evidence by. The SEND Tribunal appeal form asks you to list the documents and evidence you have included with your appeal form.</p>

Witnesses

You can ask professionals, including school staff, to be a witness. Think carefully about how they would support your case. It may be just as helpful if they were to provide a letter, a report or a statement which you can include as evidence.

If they attend the hearing, your witness (you can have no more than three) may clarify or expand on information they have provided.

Private therapists and psychologists you have called as witnesses are likely to charge you for their time.

The local authority can ask professionals to attend as witnesses too – you will be able to see who they have called when you receive the appeal bundle.

You will need to let **SEND Tribunals** know of your witnesses when you complete the '**Attendance form**'.

Telephone Case Management

This is where a conference call is arranged between the tribunal judge, the local authority and you (and/or your representative). You will be given a number to call and call joining instructions beforehand.

It might be that one party has requested this or perhaps the judge would like something clarified ahead of the hearing. Sometimes it can be just to set a new hearing date.

You can also request Telephone case management, perhaps where you would like some information from the local authority or clarification of something that cannot wait until the hearing.

Use the 'Request for change' form (and send a copy to the local authority) to explain why you would like the Tribunals service to arrange this for you.

Can I Withdraw my Appeal?

If you decide to withdraw your appeal, you will need to notify **SEND Tribunals** and the local authority. There is a '**Withdrawal of Appeal or Claim**' form.

sometimes the judge will insist both parties attend the hearing to discuss late settlement.

Where you have come to an agreement after the local authority have sent in their response to the appeal, a document detailing what has been agreed should be signed by both parties and sent to SEND Tribunals. This is known as a 'consent order'. As there are no deadlines which apply automatically, we would advise you agree this with the local authority and include it in the consent order.

The Hearing

'Paper Hearings'

'Refusal to assess' appeals are usually '**paper hearings**' unless you request an oral hearing. A paper hearing means **you will not need to attend**.

'Oral Hearings'

- Oral hearings will be considered by a panel at a family court as close to your home as possible, however hearings are now being held on virtual platforms as a result of the Covid-19 Pandemic.
- Usually this is one day but could be over two days depending on the appeal.
- Sometimes a hearing may be adjourned.
- The panel consists of a tribunal judge and up to two specialist members.
- Your child may attend for all or part of the hearing, and all parents may attend.
- The judge will introduce and give an overview of the hearing
- You will be asked questions and will also have the opportunity to ask any questions of the local authority and witnesses.
- You can make a closing statement or summary; it can be helpful to bring with you a photo and your child's views that you can share.
- The decision will be communicated to you (and the local authority), **within 10 working days** of the hearing.

After the Hearing

The Tribunal decision will be communicated to you and the local authority, within 10 working days of the hearing.

Following the decision, the local authority must comply with these timescales:

- To start the assessment or re-assessment process - 4 weeks
- To make an EHC plan - 5 weeks
- To amend the EHC plan - 5 weeks
- To amend the school/college/institution - 2 weeks
- To continue an EHC plan - immediately
- To cease an EHC plan – immediately

Health and Social Care Recommendations

The tribunal will not be able to make legally binding orders on health and social care matters. There is an expectation that any recommendations the tribunal makes will generally be followed. The responsible health body or social care team must respond in writing to you **within 5 weeks of the recommendation being made.**

If a decision has been taken not to follow all or part of the recommendations, the health body or social care commissioner **must give sufficiently detailed reasons for that decision.**

Where can I get more Information, Advice and Support?

Find out more by:

- Reading our online information about appealing to the SEND Tribunal at: www.cornwallsendiass.org.uk
- Looking at the SEND Tribunal Information at: www.justice.gov.uk/tribunals/send
- Reading the information from IPSEA about Appealing to the SEND Tribunal at: www.ipsea.org.uk

SENDIASS can give you:

- Information about the SEND Tribunal Process
- Advice about making an appeal
- Support to prepare for the appeal hearing

Further Information

View our other information leaflets and resources at:

www.cornwallsendiass.org.uk



Information: You may find it helpful to look at our other leaflets and information on our website and social media channels. We have some downloadable resources. If you can't find the answers.



Advice: We provide unbiased information and advice about what the laws say, the local authority's policies and procedures, and about the policy and practice in local schools or other

settings. We do not take sides or tell you what to do, we will help you get the information you need to make your **own choices**.



Support: We can help you by **listening** to your views and concerns, whilst working with you to explore your options. We can help you with preparation for meetings, with letters, forms and reports and support you to have the confidence to **express your views**.

if you would like some extra support for your child/young person you can call or email our Advice Line service on 01326 331633 or info@cornwallsendiass.org.uk

**Our Advice Line is open 10:00-15:00pm
Monday to Friday**

