

Appealing to the SEND Tribunal

This information is for parents and carers who are thinking about appealing to the SEND Tribunal. It's written to help you decide whether to go ahead or not. If you do go ahead, it will help you to understand how the process works, what you need to do and when, and what your role will be.

This is the basic 'how to' information about appealing Education Health and Care (EHC) plan and EHC needs assessment decisions. You can find detailed information about appealing specific decisions, such as refusal to assess for an EHC plan or ending an EHC plan, on the IPSEA website.

decisions made about an EHC plan or assessment, you can appeal those decisions. When you're appealing something, you're asking for a decision to be changed. You're also appealing to the court/tribunal and not to the local authority.

You can appeal for the following reasons:

- refusal to do an EHC assessment or reassessment
- refusal to create (issue) an EHC plan after doing an assessment or reassessment
- if you disagree with the contents of an existing EHC plan which are about education (sections B, F and I)
- deciding your child does not need an EHC plan any more (ceasing the plan)

You can find out more about this on our web page or factsheet about EHC plans.

What does appealing to the SEND tribunal mean?

Appealing to the SEND tribunal means going to a court hearing (often online) to challenge a decision made by a government department or agency. Going to court like this is sometimes called 'appealing' a decision.

A tribunal is a *court that specialises in a particular problem*. The SEND Tribunal is responsible for handling appeals against local authority decisions about special educational needs.

What can I appeal about?

When a **local authority** makes certain decisions about the education and/or training of a child with SEND, there is a right of appeal to an independent tribunal. That means if you or your young person disagree with some of the



Important to know

Appealing to the SEND Tribunal can be a long and sometimes stressful process for parents.

It makes sense to think about other ways you could come to an agreement with the local authority and explore those first, or as well. Informal discussions, mediation and working together on the 'working document' (see below) are all ways of doing that.

Important things to know about the appeal process

Thinking about an appeal

You must usually have at least considered mediation, and have a mediation certificate, before you can register an appeal. You get a certificate by either

- having a mediation meeting with the local authority, or
- talking to Global Mediation and considering mediation, but then deciding not to go ahead

The exception to this is if you are only appealing the place where your child goes to nursery, school or college (section I). If you are appealing section I only, you can still ask for mediation if you would like it. Many parents find it helpful to have a mediation meeting with the local authority. Mediation can help you to understand the local authority's views and that can be useful if you appeal. You can find out more about going to mediation in our 'How To' Guide.

If your child is over 16, and they have the capacity to make a decision to appeal, then they have the right of appeal. That means you can support them, but they are the person appealing. They must be between 16 and 25 and either:

- at a school or college - or trying to get into one; or
- taking part in an apprenticeship, internship or workplace scheme - or trying to get into one

Going to tribunal can be a long process. Depending on what you're appealing about, it can be months from registering the appeal to having the court hearing. It's a shorter time if you're just appealing about where your child will go to nursery, school or college (section I of the EHC plan only).

You don't usually need a solicitor or lawyer to go to appeal. The SEND Tribunal is designed to be as user-friendly as possible, so parents and young people can and do successfully go to appeal without a solicitor. Many parents have people to support them though, during the process and on the day of the hearing.

If you are on a low income, or the appeal is being done by your young person, you may be able to get legal aid. This means you can get free legal help to prepare the paperwork and you may also get some help with paying for reports and assessments. Legal aid doesn't usually pay for a solicitor or lawyer to go to the hearing itself. You can find out more on the IPSEA website.

It doesn't cost anything to appeal to the SEND tribunal. But it can take up a lot of your time. There is paperwork to complete and organise, evidence to gather and submit and planning to do around presenting your case. It can also be stressful, particularly if you're doing it alone or you have lots of other commitments. Asking someone to help and support you can ease the load.

This will sound obvious, but it's important to remember that parents don't always succeed at appeal. Sometimes the Local Authority does. It's a good idea to think about what you will do, and how you will feel, if that happens. Many parents find it helpful to have a back-up plan in case this happens.

If you have decided to appeal

You need to be very clear about what it is you're appealing and what you want to get out of the appeal. If you are appealing the contents of the EHC plan, you should be as specific as you can about what you want changed or added to it. If the information you give isn't specific enough, it can delay an appeal or even end it before it is heard in court.

As well as being specific, you also need good evidence to back up what you're asking for. Linking the information in reports directly to the specific parts of the plan you are highlighting and want changed, can help the judge and others see clearly what is being asked for.

Whatever age they are, getting your child's view is a really important part of the process and should be at the centre of everything. The judge and panel members will want to know what your child wants, and what they think about what's in the plan and about what is proposed.

Once you have registered your appeal, you and the local authority must share all the information about the appeal with each other, as well as with the SEND tribunal. So, anything you send to the tribunal, you must also share with the local authority, and vice versa. This is because sharing information can help to resolve the dispute and avoid delays.

You can use the time between registering an appeal and it being heard in court, to try and come to an agreement with the local authority. Sometimes parents and local authority staff are able to resolve their disagreement by meeting, discussing the issues and working on the EHC plan together. This is called the **working document**, and you can find out more about it on the IPSEA website. If you and the local authority come to an agreement about the EHC plan before the hearing, you can withdraw the appeal.

At the appeal hearing

Going to court/tribunal is a formal and serious thing, and you'll be speaking in front of a panel of people, including a judge. However, court staff, judges and panel members are usually supportive and helpful. They are keen for parents, families and young people to feel at ease and be able to speak up confidently. The tribunal service has made some short films about appealing and being at the hearing. You can find details about these at the end of this factsheet.

Children and young people can and do go to tribunal and give evidence, if the tribunal panel agrees. It's helpful for young people to be there to explain their case. The appeals panel will want to hear anything they have to say. Your young person may also want to ask questions of the local authority and any witnesses they have. If they are the person appealing, you can go with them to give support.

All tribunal hearings are held online unless you specifically ask for a face-to-face hearing.



'On the papers' hearings

Some tribunal hearings can happen 'on the papers.' This means that the judge and panel members look at written evidence only, so neither you nor the local authority will need to go to a hearing. Both you and the local authority will have to agree to do it this way. On the papers hearings tend to take less time and they're often done for 'refusal to assess' appeals. This is where the local authority has said it will not do an EHC needs assessment for a child.

If you decide you want your appeal heard this way, because you think it might be quicker, contact the SEND Tribunal first to check if that's the case.

An overview of the appeals process



Important to know

The **deadline for registering** an appeal is

- two months from the date of the letter from the local authority, giving their final written decision **or**
- 30 days from the date of the mediation certificate

whichever is the later.

If you miss the deadline, you must ask for an extension by sending the appeal form as soon as possible, telling the judge why the appeal is late. A Judge may extend the time for making the appeal if there were special circumstances that prevented the appeal being made in time, and it is fair and just to do so.

These are the basic steps of the appeals process. You can find more detailed information on the IPSEA website.

	What happens	When
<p>Step One</p> <p>Registering the appeal</p>	<p>If you've decided to appeal, the first thing to do is register the appeal. You will need to fill out a form and send it in. You need</p> <ul style="list-style-type: none"> • form SEND 35a if you are appealing because the local authority is refusing to do an EHC needs assessment • form SEND35 for everything else <p>The forms ask you about:</p> <ul style="list-style-type: none"> • who is appealing • what the appeal is about • the reasons for your appeal (education, health or social care) • who you are appealing against (which local authority) • who else is involved – your child's other parent and any representatives or supporters, for example • any support you will need at the hearing, such as an interpreter or translator <p>Suffolk SENDIAS have a series of videos that show you how to fill out the forms. Make sure you send all the information they ask you for, including your mediation certificate, decision letter from the local authority, copy of your child's EHC plan and all the professional reports that were used to make it. Send as much of the evidence you have at this stage, to support your appeal.</p> <p>Contact details for the SEND Tribunal are in the 'more information' section below.</p>	<p>The day you register</p>
<p>Step two</p> <p>Hearing from the Tribunal</p>	<p>Once you have sent the form in and registered your appeal, you should hear back from the SEND Tribunal in writing. They will tell you what happens next, give you important dates, and say what you need to do when. That includes:</p> <ul style="list-style-type: none"> • the date of the hearing • the date by which you need to send your final evidence and • the date by which you need to tell the tribunal staff who is going to be at the hearing <p>Put the hearing date in your diary when your appeal is registered, as well as the dates when you need to do things by. You'll also get a</p> <ul style="list-style-type: none"> • request for changes form – use this to tell the SEND tribunal anything you need to during the process • case review form - this is so the tribunal staff can get an update and see if there has been any progress on agreeing disputed issues, ahead of the hearing <p>You can find out more about the case review and request for change forms on the IPSEA website.</p> <p>When your appeal is registered, the tribunal service will send all the information you've sent in to the local authority.</p>	<p>10 days after registration</p>

	What happens	When
<p>Step three</p> <p>The local authority responds</p>	<p>The local authority responds to your appeal. When it does that, it must say whether they oppose the appeal and why. You're entitled to know what their case is and if that's not clear, then you can ask the Tribunal for an order which asks the local authority to make it clearer.</p> <p>The local authority must send you any information they send to the tribunal, so that you know about all evidence and communications. This should happen all the way through the process.</p> <p>You should be told who your Tribunal Officer from the local authority is. They are likely to be your main contact throughout the appeal.</p>	<p>Usually within 30 days of the local authority getting notice of your appeal.</p>
<p>Step four</p> <p>The working document</p>	<p>If you are appealing the contents of the plan, you can work with the local authority to see if your disagreement can be sorted out before the tribunal hearing. This means working on the EHC plan to create a new amended version. It's called the working document.</p> <p>There are several months between registering an appeal and having the hearing. At any time during this period, you and the local authority can work together to try and resolve things. Contact your Tribunal Officer and Caseworker to discuss it.</p>	<p>At any time between registering the appeal and going to court.</p>
<p>Step five</p> <p>Choosing witnesses and gathering any more evidence</p>	<p>Decide whether you will be calling any witnesses to support your case at the tribunal. For example, you might ask the SENCO or headteacher from your child's school, or from the school you want them to go to. Or it might be helpful to have other professionals, such as your child's Speech and Language Therapist or Occupational Therapist there, if it's relevant to your case.</p> <p>Witnesses can only give the facts, not opinion. That means they're not on anyone's 'side'. That applies to any witnesses that the local authority may have at the hearing too. Use the case review form to tell the tribunal about your witnesses and anyone else going to the hearing with you. Make sure you send this in by the deadline.</p> <p>You can also be gathering extra evidence at this stage. This forms part of the tribunal bundle (see below). It's a good idea to send what you have in one go.</p> <p>Any evidence you didn't send in with your appeal form needs to be sent to the SEND Tribunal by the deadline that's in your registration letter. It's best to send anything in good time, rather than waiting for the final evidence deadline. If you are going to have any witnesses at the hearing, they should write a statement, and that should be sent to the Tribunal too.</p> <p>Remember to send a copy of any evidence to the local authority at the same time as sending it to the tribunal.</p>	<p>At any time between registering the appeal and the deadline set by the tribunal.</p>

	What happens	When
Step six Getting the 'tribunal bundle' and hearing details	<p>At least 10 working days before the hearing, the local authority will send you and the SEND Tribunal the 'bundle'. This is a set of all the documents the SEND Tribunal has been sent by you and by the local authority, including forms and evidence. The pages are numbered to help everyone find things more easily.</p> <p>Check the bundle when you get it, to make sure nothing has been left out. If any evidence is missing, contact the local authority straightaway and tell them what you think needs to be added.</p> <p>You should also get details of the hearing itself. You should be told what time it will start and where it is being held. If it's a virtual (online) hearing, you'll be sent the link to join.</p>	At least 10 days before the hearing
Step seven The hearing	<p>Most hearings are now done virtually rather than in person at a court building.</p> <p>The hearing will be led by a 'panel' of two or three impartial people, including a judge and a SEN expert. They will have read the bundle and will have discussed the main issues before the hearing. The panel members will ask questions and give you, and the person from the local authority, a turn to speak and a turn to ask witnesses any questions.</p> <p>You can find out more about the different types of hearing, and what happens during the hearing, on the IPSEA website.</p>	The day of the hearing
Step eight: After the hearing	<p>For an appeal about where your child goes to nursery, school or college, the judge may tell you about their decision on the day of the hearing.</p> <p>For other types of appeals you'll get a letter telling you the decision. That usually takes around 10 days. If you're successful in your appeal, the judge will tell the local authority what it needs to do and when they need to do it by.</p> <p>You can find out more about that on the IPSEA website.</p>	On the day or within 10 days of the hearing

Top tips for helping things go smoothly

1. Have all your documents to hand when you fill out the registration form. You will need the following:
 - The decision letter from the Local Authority giving you the right of appeal decision letter.
 - A copy of the signed mediation certificate (unless this is an appeal about just the place where your child goes to nursery, school or college).
 - A copy of your child's EHC plan and all the documents listed in Part K (where a plan has been issued).
2. On the form, you'll be asked to give details of your representative if you have one. A representative is someone who speaks on your behalf. That usually means a legal representative, such as a solicitor. Most parents do not have or need a representative, but quite often they will have a supporter. This is a different person from a representative. They support you or your young person at the hearing' but they do not represent you in the appeal or help you express your views. Sometimes DiAS Officers can act as supporters for parents (if we have the availability).
3. Read everything carefully and get advice if you are unsure about any of it. There is a lot to keep track

- of and manage at certain points. Some parents can find it a bit overwhelming. So, it can be helpful to check you understand it all and make sure you're clear about what you need to do, and by when.
4. It's worthwhile being organised – make sure you have up to date copies of assessment reports and recommendations and keep everything in one place. Label electronic files clearly so you can find them easily.
 5. Arrange childcare for the day of the hearing if you need it. Sometimes hearings can run until after 4pm.
 6. Put all the deadlines in your diary or calendar and add in a reminder a week or two before each deadline. This will help to make sure you don't miss anything important.
 7. If you think you may need to send evidence after the deadline for it has passed, you can ask for an extension or send the information in as late evidence. This might be for something like an assessment report, which you know is going to be important for the tribunal panel to see, but which won't be ready in time to meet the deadline. Tell the tribunal as soon as you know you'd like an extension to the deadline. Use the 'request for changes' form. Remember to send a copy of any evidence to the local authority at the same time as sending it to the tribunal.
 8. Make sure you have the tribunal bundle with you at the hearing, so you can follow what's happening and find any information you need on the day. Any witnesses who are coming to give evidence should have a copy of the bundle too. Your witnesses aren't automatically sent one, so ask your local authority contact for electronic copy, which you can then send to your witness or supporter.
 9. If your tribunal is virtual, check that you have a good internet connection wherever you'll be for it. It's usually easier to use a laptop, PC or tablet as it's difficult to see much on a smart phone. Parents have told us that using Chrome as your internet browser usually works well. Make sure your battery is fully charged or you're connected to a power supply.
 10. You will be sent joining instructions for an online hearing about 10 days before it. Have a test run so you know how to get online. Send the joining instructions to any witnesses or supporters you have and suggest they have a test run too, to avoid last-minute stress.
 11. If you've got your young person or supporters with you, set up a WhatsApp group beforehand, so you can message each other during the hearing. This is helpful if you have questions or want to discuss or check something, without everyone else hearing you.
 12. You may be asked to give some background and say a little bit about your child at the start of the hearing. It's a good idea to prepare something beforehand, that you can read out. Keep it brief but cover the main points about what has led to the appeal.

How DiAS can support you

DiAS Officers can, and do, support parent carers and young people before and at tribunal. This does depend on our capacity though, and someone may not always be able to attend.

We can help you to:

- understand and complete paperwork
- think about the evidence you may need to support your case
- understand what you need to do and when, and what the local authority should be doing
- understand what will happen at the hearing and what you can expect
- work with the local authority if there is a chance to resolve difficulties before getting to the tribunal hearing

Where you can find more information

First-tier Tribunal (Special Educational Needs and Disability)

1st Floor, Darlington Magistrates Court

Parkgate

Darlington DL1 1RU

Email: send@justice.gov.uk

Telephone: 0300 303 5857

www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability

IPSEA (Independent Providers of Special Educational Advice)

A charity specialising in SEND law, including detailed information about appealing to the SEND tribunal. They

also run training for parent carers, including Tribunal hints and tips.
www.ipsea.org.uk

Global Mediation

The mediation service that covers Devon.
0208 441 1355
www.globalmediation.co.uk/

Ministry of Justice

Going to tribunal - four films about what a tribunal is like
www.youtube.com/watch?v=rTNx8tp6EDI

HM Courts & Tribunals Service

Video hearings at the Special Educational Needs and Disability Tribunal
www.youtube.com/watch?v=SPEMtWWYAZ8&list=PLORVvk_w75Py6JCIMOiiltyTjI2gyc81g&index=5

How to appeal a special educational needs (SEN) decision - booklet
www.gov.uk/government/publications/how-to-appeal-a-special-educational-needs-sen-decision-sen37

Surrey SENDIAS

Film about filling out the tribunal form to register your appeal
www.youtube.com/watch?v=Lqzzw5G3lrQ

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