

## **APPEALS TO THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY TRIBUNAL (SENDIST)**

There have been major changes recently in terms of tribunal procedure, and to an extent we are still working through these - as indeed is the tribunal which is continuing to make adaptations as a result of experience with the new system. This is a "barebones" account of fairly dry procedural matters.

### **What can you appeal against?**

- A refusal of statutory assessment or reassessment (in the latter event, provided there has been no new assessment within the preceding 6 months)
- Following statutory assessment, refusal to issue a statement
- Refusal to change a statement after reassessment
- The contents of a statement
- A decision to cancel a child's statement
- Refusal to change the school named in the statement, provided the statement is at least a year old, the school requested is maintained, and the parent is asking for the same type of school as the one in the statement.

The time limit for appealing is 2 months from the date the decision complained of was sent out.

### **Initial procedure**

The parent fills in an appeal form, which can be found on the SENDIST website ([www.sendist.gov.uk](http://www.sendist.gov.uk)). Appeal grounds should be as thorough as possible and accompanied by all available relevant documents and reports. However, you do not need to delay entering your appeal whilst trying to obtain independent experts' reports, because there is provision for these to be filed at a later stage.

Once the appeal is registered, the tribunal will send the papers to the local authority (LA) and further information including the proposed hearing date. The LA has 30 working days to respond and must serve the response on the parents as well as the tribunal.

### **Case management**

The tribunal will send automatic directions covering such matters as when documents and details of witnesses have to be filed. They will also order that specific information be filed by one or both of the parties, for example as to the costs of school placements. They will also send out a Further Information Form (SO1) to be returned by a defined date, usually shortly after receipt of the local authority response. This requires the parties to answer questions about what is in dispute and such matters as witnesses, expert evidence to be obtained, representation, and what further documents and information they intend to file. The parties can also separately – at any stage in the process – make applications for specific directions, using a different form (SO4) – for example, requiring the other side to produce particular information or documents, applying for a postponement of any deadlines, leave to call extra witnesses etc – the form is available on the SENDIST website and gives the full range of possible applications, with an extra box for requests for anything that is not listed.

In some cases arrangements will be made for a hearing by telephone to discuss case management or an SO4 application, and in practice the tribunal seems to be using these to an increasing extent. Very

occasionally (normally where a parent has communication or learning difficulties) there will be a “face to face” directions hearing.

It is this case management process which is the most important change from the new procedure. The tribunal wants to avoid the sort of problem which has happened in the past when hearings have had to be adjourned because the tribunal does not have enough information to make a decision, or because one party has served evidence so late that the other side has not had enough time to consider it. The procedure also aims to narrow down the issues between the parties so that at the hearing the panel can concentrate firmly on areas of disagreement and time can be used efficiently.

The tribunal can order the production of relevant evidence, and has power to require that a child be made available for examination or assessment by a professional, but an application can only be made if a request has been made and refused. If the parents refuse to comply the tribunal is entitled to draw adverse inferences. It can also order schools to allow access to experts to assess the child or the provision to be made in the school, again only if this has been requested and refused. Failure to comply with a tribunal direction may result in the case being struck out provided that there has been a prior warning of this; or parties may be prevented or restricted from further involvement in the appeal.

The tribunal directions will set a deadline for the submission of any further evidence, usually the 16th week after the appeal was entered.

## **Hearing**

The tribunal sends details of the proposed hearing date, normally 20 weeks later, when it first registers the appeal, but it is open to the parties to apply to change this if necessary.

Before the hearing the tribunal is supposed to produce a streamlined bundle in a set order, with a single sheet chronology prepared by the LA. However to date major staffing problems at SENDIST have meant that the compiling of tribunal paperwork is unreliable and bundles need to be checked carefully.

In cases where there is a dispute about the contents of the statement, the LA will be directed to send to the parents a “working document” showing what amendments, if any, they are prepared to agree. The parents should then consider this and, using it as a basis, prepare their own document clearly demonstrating what they do or do not agree with, and what additions or amendments they are requesting.

If the parties reach agreement, it is of course always open to them to withdraw or agree to a consent order disposing of the appeal

Each party can normally call up to three witnesses at the hearing, but can apply for leave to call more. The appeal is heard by a panel of three, a legally qualified chairman plus two wing members who have experience in SEN. Normally the hearing does not take more than one day at the most, and a decision should be sent to each side within two weeks after the hearing.