



INFORMATION SHEET

APPEALING TO THE SPECIAL EDUCATIONAL NEEDS AND DISABILITY TRIBUNAL

This is a basic account of the procedure involved in an appeal to the Tribunal.

What can you appeal against?

- A refusal to make a statutory assessment or reassessment (in the latter event, provided there has been no new assessment within the preceding 6 months)
- Following statutory assessment, a refusal to issue a statement
- A refusal to change a statement after reassessment
- A refusal to amend a statement following a review
- The contents of a statement
- A decision to cancel a child's statement
- A 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 two 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 Tribunal website (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) along with further information including the proposed hearing date. The LA normally has 30 working days to respond and must serve the response on the parents as well as the tribunal.

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.

The LA's response must state whether they oppose the appeal and, if so, it must give grounds for doing so. Overall, the parents are entitled to know what case they have to

meet and if it is not clear they can apply for an order that the LA clarify its case (see below).

The Tribunal will also send out an attendance form to be returned by a defined date, usually shortly after receipt of the local authority response, setting out the names of the parents' witnesses and representative. However, if attendees have not been finalised by the relevant date, it is usually acceptable to say that some are "to be advised" or something similar: the tribunal is normally fairly flexible about changes in witnesses in any event. The maximum number of witnesses is usually three: it is possible to apply for permission to call more than three, but good reasons have to be given, and parties should be aware that this might increase the risk of the case lasting more than one day which can lead to long adjournments. It is also possible to bring someone along as an observer but again specific permission has to be sought.

Applications

The parties can make applications at any time for directions in relation to the appeal – for example, applying for more time to comply with a tribunal direction, leave to call extra witnesses, an order for the other side to provide more information or documents, or an adjournment of the hearing. In general, before making an application (and if time permits) it is sensible to contact the LA to see whether they will agree or will do what is being requested voluntarily – this will strengthen any application to the tribunal. Applications should be made using the Request for Changes form: samples are available via the Tribunal's website. Any application must be served on the other side and the Tribunal needs evidence that you have done so: it is usually simplest to email the application copying the LA in at the same time. If the application is urgent, that should be shown in the heading to the email, otherwise it can take up to two weeks to process.

The Tribunal can order the production of relevant evidence, and has the 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. In relation to appeals against parts 2 and 3 of a statement, they will also include a direction for the parties to co-operate in producing a working document which should be filed 10 days before the hearing. This is a document based on the statement being appealed in which each side indicates by the use of different fonts the changes they are requesting, and also any agreed changes. The aim is to try to narrow down areas of disagreement, and to produce a document which clearly illustrates the changes being requested. All suggested changes need to be based on the written evidence available and references showing where the evidence needs to be included.

A Tribunal Registrar may telephone the parties three or four weeks before the hearing to ask about the progress of the appeal. They are likely to want to talk about whether any further evidence is to be filed, whether the parties are ready, whether there are any changes in witnesses, and in particular whether there is any likelihood of the case being settled.

For appeals against the refusal of statutory assessment, the parties can agree to ask the tribunal to deal with the case on the basis of the papers, without a hearing. However this is not usually advisable.

It is of course open to the parties to reach agreement and avoid the need for a hearing. If that happens the appeal can be withdrawn or (preferably) disposed of by way of a consent order showing what has been agreed. However, if the settlement takes place less than five days before the hearing the tribunal will not consent to an application for withdrawal or concession and will direct the parties to attend to explain the reasons why the case could not have been settled earlier.

Expedited timetables

It is open to the parents to request an earlier hearing in urgent cases, although before doing so it is sensible to ensure that all the evidence – particularly experts' reports – can be available to meet tighter deadlines. It is also sensible to see whether the LA is prepared to agree and to seek to agree possible dates with them once the availability of all the witnesses has been checked. If the LA does not agree, an application can still be made to the tribunal giving reasons.

The tribunal will in any event normally require an expedited timetable (14 weeks) for cases involving appeals against school placements where children are due to move to new schools the following September: this is to try to ensure that all appeals have been dealt with and decisions given in good time for the new school year. It is also likely to start trialling expedited timetables for appeals against the refusal of statutory assessment.

The hearing

The Tribunal sends details of the proposed hearing date, normally 18 weeks later, when it first registers the appeal, but it is open to the parties to apply to change this if necessary.

The appeal is usually heard by a panel of three, a legally qualified chairman plus two wing members who have experience in SEN: however, the tribunal is likely to trial offering hearings by a panel of two, particularly in relation to appeals against the refusal of statutory assessment. Half a day will be set aside for most appeals except those involving a challenge in relation to school placement. If the hearing has to be adjourned another date will need to be found when panel members and witnesses are available, and this may involve quite considerable delay. A decision should be sent to each side within two weeks after the hearing.

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