

**Bradford SENDIASS**

**The SEND Tribunal Process**

The SEND Tribunal is part of the system of courts and tribunals which makes decisions in appeals and claims in relation to children and young people’s Special Educational Needs (SEN) and Disability.

This guide will focus solely on appeals lodged with the SEND Tribunal in relation to EHC plans.

**When can you appeal?**

As a parent of a child with SEN (or a young person over 16 with ‘mental capacity’), you can appeal to the SEND Tribunal if your Local Authority (LA):

* refuses to carry out an EHC needs assessment
* refuses to issue an EHC plan after an assessment
* refuses to amend an EHC plan following a review or reassessment
* decides to cease to maintain an EHC plan.

There are also rights of appeal about the contents of an EHC plan when first issued or reviewed/amended in a final form, specifically against:

* **Section B**: detailing the child or young person’s special educational needs;
* **Section F**: setting out the special educational provision specified in the EHC plan;
* **Section I**: naming the school or other setting in the EHC plan (and/or the type of school or setting), or if no school or other setting is named

There is advice from HM Courts and Tribunal Service about appealing decisions available at: How to Appeal an SEN Decision <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776348/send37-eng.pdf>

**What do you need in order to appeal?**

If you wish to lodge an appeal with the Tribunal then you must submit the following:

* An appeal form ( SEND35, or 35A to appeal against refusal to assess, which can be downloaded from the SEND Tribunal’s website);

SEND Form 35

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776041/send35-eng.pdf>

and

SEND Form 35A

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776050/send35a-eng.pdf>

* An LA decision letter - this will state that you have two months in which to appeal from the date of this letter and is usually the cover letter accompanying the final EHC plan
* A mediation certificate (this is mandatory if you wish to appeal against an EHC-related decision, unless the dispute is simply about the naming of a school) - a mediation certificate can be obtained by contacting the number provided in the LA’s decision letter. You can then appeal within one month of obtaining this certificate. Therefore, the mediation certificate can potentially extend your appeal deadline
* If appealing against contents of an EHC plan, the EHC plan complete with appendices
* Your Grounds of Appeal, detailing your reasons for appealing against the LA’s decision

**The Appeal Timetable**

This is usually a 20-week process as follows:

• Week 0: The appeal is lodged

• Week 0-2: The appeal is registered

• Week 6: The LA must respond to the appeal

• Week 16: All further evidence must be submitted

• Week 20: The Tribunal hearing will take place

• Week 20+2: The Tribunal decision is issue.

However, if the appeal concerns a transfer of schooling, i.e. between primary and secondary school or between school and college at Post-16/19 the appeal will be placed on an expedited timetable of 12 weeks.

This would then operate on the following timescales:

• Week 0: The appeal is lodged

• Week 0-2: The appeal is registered

• Week 5: The LA must respond to the appeal

• Week 9: All further evidence must be submitted

• Week 12: The Tribunal hearing will take place

• Week 12+2: The Tribunal decision is issued

**Once Your Appeal Has Been Registered**

You will receive a ‘Letter of Registration’ which confirms that your appeal has been registered and your appeal number. It will also set out the date of the hearing and relevant deadlines for both the LA and yourself including:

* Deadline for the LA’s response to the appeal
* Deadline for submission of Case Progression Checklist and Attendance Form for both parties
* Further Evidence deadline for both parties

**The Hearing**

**Where will the hearing be?**

Since August 2016, all refusal to assess appeals are “paper hearings”, you will not need to attend unless the judge orders an oral hearing. In this case the hearing will be held at a venue no further than 2 hours away from where parents live.

**Who will be at the hearing?**

The hearing will be heard by a panel of two/three people, consisting of one Tribunal Judge and one/two specialist members with experience of special educational needs.

The LA representative and the parents/young person and, if requested, their representative, will be in attendance. Witnesses as specified in their Attendance Forms (mentioned above), of whom there will usually be up to three (extra witnesses can be allowed in exceptional circumstances) will also attend.

**What happens after the hearing?**

You should expect to receive a written decision regarding your case within 10 working days following the Tribunal hearing. The decision is sent to the nominated contact and the local authority.

**How soon will the decision be put into practice?**

Once SEND Tribunal’s decision is issued, the local authority must carry out the order within a fixed period, beginning with that date.

* To start the assessment or reassessment process – **four weeks**
* To make a EHC Plan – **five weeks**
* To amend EHC Plan – **five weeks**
* To amend the school/college/institution – **two weeks**
* To continue an EHC Plan – **immediately**
* To cease (no longer maintain) an EHC Plan – **immediately**

Some of these timescales also apply when the local authority tells the SEND Tribunal that they do not oppose the appeal. If the local authority does not keep to the order within that time, you may have to 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 by contacting the LGO Advice Team on 0845 602 1938, or by writing to:

Local Government Ombudsman

PO Box 4771

Coventry

CV4 0EH

You can also visit their website: <https://www.lgo.org.uk/make-a-complaint/fact-sheets/education/special-educational-needs>

**What can I do if I am not happy about the decision?**

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

When you have received a decision, you may think that the decision is wrong in law or that there is another reason why SEND Tribunal should look again at the decision. If you think it is wrong in law, you can appeal to the Administrative Appeals Chamber of the Upper Tribunal but you must first ask for permission to appeal.

Guidance explaining how to make an application for permission to appeal against the decision and other applications that you can make following the decision is included with the decision.

**Who can make an application?**

You can make an application if you have been involved in an appeal or claim before the First-tier Tribunal in a special educational needs or disability discrimination case. This includes if you are a parent, or person with parental responsibility, a local authority or a responsible body for a school.

**What applications can I make?**

Following a decision of the First-tier Tribunal, you can make the following applications:

* You can apply for permission to appeal if you think that the decision was wrong in law.
* You can ask SEND Tribunal to review the decision because there has been a change of relevant circumstances since the decision was made.
* You can ask for the decision to be set aside in certain circumstances.

The three applications are explained in detail in the guidance sent with your decision.

**When can I make an application?**

You must make an application so that it is received by SEND Tribunal no more than 28 calendar days from the date on the letter sent with the decision.

If you are applying more than 28 calendar days after the decision is sent, you will need to apply for an extension, giving the reasons why the application is late. If a tribunal judge does not agree to extend the time, your application will not be considered.

**For further information and advice, contact Barnardo’s SENDIASS:**

Telephone: 01274 513300

Email: bradfordsendiass@barnardos.org.uk

Write to: Bradford SENDIASS

 40–42 Listerhills Science Park

 Campus Road

 Bradford

 BD7 1HR

Or visit our website for more useful information:

<https://barnardossendiass.org.uk/bradford-sendiass/>

Or go to: IPSEA <http://www.ipsea.org.uk/>