

Tribunal : Lodging an appeal

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Appeal forms

Appeal forms can be found on the HM Courts and Tribunal Service website:

<https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>

Use SEND35a for a 'Refusal to Assess' appeal:

<https://www.gov.uk/government/publications/form-send35a-special-educational-needs-and-disability-tribunal-appeal-a-refusal-to-secure-an-ehc-needs-assessment>

Use SEND35 for all other appeals:

<https://www.gov.uk/government/publications/form-send35-special-educational-needs-and-disability-tribunal-appeal>

Read SEND37 for additional information about appeals:

<https://www.gov.uk/government/publications/how-to-appeal-a-special-educational-needs-sen-decision-send37>

Note: This guidance document does not cover information about mediation and its role in the appeal process. If you have not already had guidance about mediation, please see our Mediation leaflet.

When can you lodge an appeal?

Appeals must be lodged:

- Within 2 months of receiving your 'Right of Appeal' (your letter from the local authority)
- OR within a month of receiving your mediation certificate, whichever is the later date

If there are exceptional circumstances for missing the deadline you can apply to the Tribunal for an extension.

Types of appeal

Refusal to Assess Appeals

By default, and for maximum efficiency, the Tribunal will hear the appeal on paperwork alone, without either you or the local authority being present.

You may make a written request for the Tribunal to be heard orally (section 4 of the SEND35a form) and your reasons will be considered by the Judge. The date for an oral hearing may be set later than that for a paper hearing.

The appeal form for a Refusal to Assess is different to the form used for all other appeals (see appeal forms section on page 2).

Appeals against a refusal to issue an EHCP

If you lodge an appeal against the local authority's decision not to issue an Education Health and Care Plan (EHCP) following an EHC needs assessment of your child/young person, consider the following:

- Whether you are confident there is enough evidence (within the professional assessments undertaken) about your child /young person and the support their needs, but believe the local authority has failed to identify this. You should attempt to show the strength of evidence which has been overlooked as you will be relying on this alone for your appeal.
- Whether you believe the local authority failed to arrange specific professional assessments which were necessary as part of the whole EHC needs assessment of your child/young person. It is important that you highlight this in your appeal and state clearly what assessments you believe need to be secured. (You might have a recommendation from within another professional report that further assessment is advised).
- Whether you are concerned that assessments and reports which have been completed have simply not been sent to the local authority special educational needs (SEN) department, either because the department did not seek them, or because the issuing body has failed to send the necessary information. You will need to include this in your reasons for appeal, highlighting what is missing.

Appealing the educational elements of a final EHC plan

The educational aspects are found in sections B, F and I. Your grounds for appeal *must* be based on at least one of these sections.

SECTION B - A child's or young person's special educational needs

Look closely at Section B to make sure your child/young person's needs (difficulties) are clearly and fully described. You will need to look through the professional evidence (Appendices) which were sent to you with your *draft* EHCP. These reports should identify and describe your child/young person's needs, as it is from these 'needs' that everything else is determined.

You may believe that your child/young person has not had all the assessments they requires in order for the local authority to know the full extent and full range of their needs. If this is so then state this in your reasons for appeal; as part of your appeal, you can ask for specific assessments such as OT sensory or speech and language, but try to show evidence that they're required.

SECTION F - Special educational provision

Look closely at section F to make sure provision is made for each of your child/young person's needs. Provision must be specified for each and every need shown in section B. The provision must be clearly specified with respect to what it is, how often it is provided and for how long each time, and also who will be providing it (and what training/supervision that person will have).

SECTION I - The name and type of the school, maintained nursery school, post-16 institution or other institution to be attended

- You may only want to appeal the name of the school (Section I). You are within your rights to do this, but you must be confident that sections B and F are full, accurate and clear.
- A local authority is duty bound to place a child/young person in a school which can meet their needs. Therefore, they must refer to sections B (child/young person's needs) and Section F (provision that must be in place for the child/young person's needs to be met) when determining the correct placement.
- If either B and/or F are not full or accurate then a local authority may inadvertently place a child/young person in a school which cannot meet needs - so you may need to appeal against sections B and/or F as well as I.
- If you think the named school cannot meet needs or is the wrong type of school for your child/young person, then it is likely you need to appeal sections B and F as well as I
- It may be that the school named on the EHCP is the right type of school, but your wish is that your child/young person is placed in a school of your choice. In this case you need only appeal section I. (*If you are only appealing section I you are not required to have considered mediation, and therefore you will not need a mediation certificate*).
- It may be that you are happy with the named school and only want to appeal B or F because you feel they're inaccurate or incomplete.

If you are appealing against the named school

- If at the time of lodging your appeal you know which school you wish for your child to attend then name the school you are seeking.
- If you are not yet sure (and perhaps still visiting schools) then simply describe the type of school you wish your child/young person to attend.
- If you believe that your child/young person's needs are still not fully known and you therefore do not know what type of setting they need, then say just that.

Appealing Health and Social Care elements of a final EHC plan

From April 2018, parents and young people have had the right to ask tribunal to consider issues about health and social care needs relating to SEN decisions (in Sections C, D, G and H). However, the appeal must be based on the *educational* content of the plan i.e. your *reason(s)* for appeal must be related to sections B, F or I.

The SEND Tribunal only has the power to *recommend* that health and social care needs and provision are specified or amended in EHC plans. The Tribunal must send a copy of their recommendations to health commissioners as well as the local authority. Although the recommendations are non-binding, they are made by a specialist Tribunal and should not be ignored or rejected without careful consideration. Any reasons for not following them must be set out in detail and in writing, and sent to the parent/young person and the evaluators.

Health and social care commissioners *must*:

- respond to any request for information and evidence within the timeframe set by the Tribunal
- send a witness to the hearing if required
- respond to the parent/young person and the local authority within 5 weeks of a recommendation being made, setting out the steps they have decided to take or giving reasons why they are not going to follow the recommendation.

If recommendations are not followed, parents and young people will be able to complain to an Ombudsman or, in very exceptional circumstances, seek to have the decision judicially reviewed.

Completing the appeal form

Reasons for appeal

Be as full and clear as possible about the reasons for your appeal and include the issues you want the Tribunal to decide. Explain why you disagree with the decisions taken and what you are seeking. Failure to do so may result in the Tribunal refusing to lodge the appeal.

If time is short, you can be brief, but you must be clear about your grounds. If need be, more information can be supplied at a later point once your appeal has been successfully lodged.

Note: The 'reasons for appeal' boxes on the form are quite small, and it's likely you will need to use an additional sheet of paper. Make this clear on the form, and ensure you have your child's name and DOB on the supplementary paper.

Representative

A representative is someone who will give advice on the issues in the appeal, prepare the paperwork and represent the person making an appeal to the Tribunal.

Wokingham SENDIASS may be able to support you but we are not legal representatives. If you are using our service we ask that you leave this part of the form blank. You can add us to the attendance form at a later date if you need us to attend the hearing and we ask you to include the following wording on the attendance form:

Wokingham SENDIASS are attending in primarily a supporting capacity but would request the ability to speak in place of the parents if required. They are not legally qualified.

If you would like representation you could also try IPSEA or Network 81

IPSEA <https://www.ipsea.org.uk/tribunal-support-service>

Network 81 <http://www.network81.org.uk/>

Note: If you are using our service, please do not tick the box on the appeal form (SEND35 at the end of section 7) which allows documents to be sent to the representative. It is important the documents come to you; you can then share them with us.

If you are yet to decide about representatives you can state this on the form - you will have a second opportunity when you complete your Attendance form later in the process.

Note: There is more detailed information on the appeal application form about who can be a representative.

Advocate

If you are a young person, going to appeal in your own name, you may wish to use an advocate to speak on your behalf. This could be a family member or friend or you can ask Wokingham SENDIASS to act as an advocate for you.

Note: There is more detailed information on the appeal application form about who can be an advocate.

Consenting to an earlier hearing (SEND35 form only)

You might choose to tick this box (in section 9) but be mindful that you need to feel prepared. Furthermore, if you're using a representative or advocate they may not be available at short notice

Paper hearing (SEND35 form only)

On your appeal form (section 9) there's a box you can tick, if you are happy not to have a face-to-face hearing. We advise parents not to rely on a paper hearing as it is only by attending that you will be able to have your full views heard. The Tribunal will be able to ask all those present further questions to gain a fuller picture and better understanding of the situation. (This does not apply to 'refusal to assess' appeals as a paperless hearing is the default).

Submitting your Appeal

Documents to include:

- Your completed appeal form.
- A signed and dated letter from the local authority giving you the right of appeal to HM Courts & Tribunals Service. (This letter will have been sent with the final EHC plan or notification of refusal to assess/issue).
- Your Mediation Certificate (sent to you after your contact with the mediation service). A Mediation Certificate is not required if you are only appealing section I.

If your appeal is about a 'refusal to assess' also include:

- Your original request for assessment

If your appeal is about your child/young person's final EHCP also include:

- All the appendices (these were sent to you with your child/young person's draft EHCP)
- All supporting evidence you currently have. (Don't worry if you don't have it all at this point; you will have the opportunity to submit further evidence later)
- Include a 'contents' page which lists and numbers all the documents/paperwork you are sending – see table at the end of section 12 in the appeal form. (This will also help if you go on to send later evidence as you can give that piece of evidence the next number on your list and so minimise confusion).

Supporting Evidence

This can be important and very helpful to your appeal. Think carefully about it. Supporting evidence may include:

- Any evidence that you believe supports your appeal that is not already included in the appendices.
- Letters from professionals such as CAMHS, school progress reports, reports you might have asked others to write such as after-school activities leaders etc.). You could ask your child's current teacher/SENCo if they would be willing to write a statement.
- Ideally the evidence should be reasonably recent.
- In the case of any lengthy reports you are sending it might be helpful to include a statement drawing attention to specific information that might be 'hidden' deep within the report.
- Resist the temptation to submit excessive evidence which is not truly relevant.

Please be aware there are limited on the maximum number of pages of evidence which can be submitted, the number of pages vary depending on the nature of the appeal. Please consider unless there is a good reason to, you should not submit:

- emails/correspondence which are not relevant to the issues on appeal
- blank forms/pages
- repeat documents
- documents already appended to the EHC plan under appeal Section K
- professional/school reports more than 3 years old by time your appeal is made (unless they are part of the EHC plan in Section K)
- versions of the working document which are not the final agreed version, or
- any draft amended plans prior to the final version on appeal.

Lodge your appeal online if possible and keep a copy of everything you have sent.

If you need to lodge your appeal by post, send it by special delivery. Do not send original documents other than the appeal form. (Make sure you keep a copy of the appeal form with your copies of all the other paperwork you are submitting).

You should receive a response from the Tribunal Service 10 working days after lodging your appeal. They will confirm to you that the appeal has been registered, and they will give brief guidance about what happens next.

Disclaimer: Wokingham SENDIASS has made all reasonable efforts to ensure that the information contained in this leaflet is accurate and up to date at the time of publication. It does not constitute legal advice and Wokingham SENDIASS cannot accept any responsibility for any loss or damage suffered as a consequence of any reliance placed upon it.

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