

RIASS

Redbridge Information, Advice & Support Service
for Special Educational Needs & Disability



Your guide to the SEND Tribunal

This guide is for appeals against the content of a final EHC plan that has been issued by the Local Authority.

This guide has been created by RIASS, the Special Educational Needs and Disabilities Information, Advice and Support Service (SENDIASS) in Redbridge, and is intended to support parents and young people through the SEND tribunal process.

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Your right of appeal

Have you received a final EHC plan with a covering letter from your SEND Caseworker? If so, then yes you will have a right of appeal. There is a requirement for you to consider mediation for appeals against section B and F before you are able to lodge an appeal with the tribunal.

Once you have received a mediation certificate you can lodge your tribunal appeal. You have 2 months from the date of the Local Authority decision letter, or one month from the date of the mediation certificate in which to lodge your appeal, whichever is the latest.

Important dates and deadlines

Date of Local Authority decision letter:	
2 month deadline for appeal:	
Date of mediation certificate:	
1 month from mediation certificate date:	

What are you appealing against?

You can only appeal against the following sections of the EHC plan:

- Section B - educational needs
- Section F - special educational provision
- Section I - named placement

Following on from the SEND National Trail you can also appeal against the health and social elements within the EHC Plan if you are appealing against section B and/or section F. **However, the Tribunal can only make recommendations on health and social care provision, not legally binding orders as with education**

Lodging your appeal

To lodge an appeal with the Tribunal you will need to complete form **SEND 35**.

The form can be found at:

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

The appeal form is broken down into 12 sections:

- Section 1: Who is the appeal about? - These are details about the child or young person.
- Section 2: What are you appealing against? - This is where you indicate what part of the EHC process you are at and which section(s) you are appealing against. If the appeal is about the school placement you can also give details about your preferred placement.
- Section 3: Reasons for appeal - Provide information about the Local Authority decision here. Give reasons for your appeal – keep it short and to the point. If you can, refer to evidence and points of law that support your appeal. There are several boxes in this section but only complete the ones that are relevant to your appeal.
- Section 4: Reasons for asking for a recommendation for Health and/or Social Care – You can only appeal the health and social care sections of the EHC plan if you are also appealing against one of the education sections too. This section is similar to section 3, so only complete the boxes relevant to your appeal.
- Section 5: Making the appeal – Details about the LA's decision letter and mediation certificate.
- Section 6: Who is making the appeal? – If the child is under 16 then the appeal will be made by parents or the persons with parental responsibility. A young person aged 16-25 should make the appeal themselves, unless they do not have the Mental Capacity to bring the appeal themselves in which case an alternative person can bring the appeal in their 'best interests'.
- Section 7: Who else is involved in the appeal? – Details of any person or organisation that shares parental responsibility. If a young person is bringing the appeal, they may wish to have an advocate to help them to express themselves, details for this go in this section. If you wish to appoint a legal representative (solicitor) then their details also go in this section.

- Section 8: The hearing- your needs and requirements – Details regarding any special needs that the person making the appeal has that need to be taken into consideration when the hearing is being organised.
- Section 9: Paper hearing – agreement as to whether you are happy for the appeal to be determined on the written evidence without an oral hearing
- Section 10: Checklist – you must make sure that you have completed this and enclosed all the listed documents before you submit your form.
- Section 11: Please sign below – Make sure the form is signed before you submit it.
- Section 12: Sending us your appeal – Details of where to send your completed appeal form.

What to send in with your form (don't send original documents; send photocopies and keep a copy of everything you send).

Document	Tick if included
A copy of the letter the LA sent you that told you of its decision	
Your mediation certificate	
A document listing all your items of evidence	
Relevant correspondence between you, the LA and the educational establishment	
A copy of the EHC plan under appeal with all appendices listed in Section K	
Relevant professional reports which are not already listed in Section K of the EHC plan	
School reports/SEN support plans relevant to the issues	
Any assessment reports relevant to the issues	
Details of the cost of the proposed educational placement	

You can choose whether to post or email your application although the Tribunal does prefer applications via email where possible.

Once you have sent off your appeal paperwork the Tribunal will contact you to confirm the appeal has been lodged. This is usually done by email and will include key dates that you can record below:

Key tribunal dates

Date appeal lodged (date of letter from the Tribunal):	
Deadline for the Local Authority response to the appeal:	
Deadline for sending in the parent/young person Attendance Form:	
Deadline for sending in any extra information and evidence:	
Working document deadline:	

The Local Authority's response to the appeal

The SEND Tribunal will send the appeal via email to the Local Authority and ask for their response. The Local Authority will either:

- **Concede the appeal.**
This means the Local Authority will agree to make the changes that you've requested to the EHC plan, or will name the education setting that you've asked for, or
- **Oppose the appeal.**
This means the Local Authority does not agree to make the changes to the EHC plan that you've requested and the tribunal hearing will proceed.

The Local Authority will send their response to you and the Tribunal and must submit this within 30 working days of receiving your appeal documents from the SEND Tribunal.

The SEND Tribunal do not send any documents directly to your Liaise Caseworker at any point during the process so remember that you are responsible for sending any information to them.

Evidence and Witnesses

Although you've got plenty of time until the final evidence deadline you should start thinking about this as early as possible.

You may already have additional evidence that wasn't submitted during the EHC needs assessment/annual review, or you might need to organise further assessments with relevant professionals.

Witnesses

Witnesses should be able to give evidence relevant to your case. This could be someone from the educational setting (SENCo or Head Teacher), a professional who has completed an assessment with your child/young person (Educational Psychologist or Speech and Language Therapist) or someone from the school that you are wanting to be named on the EHC plan (if you are disputing the school named in Section I).

The maximum number of witnesses is usually three: it is possible to apply for permission to call more, but good reasons have to be given.

Witnesses can provide their evidence in two ways: by writing a report and/or by attending the SEND Tribunal hearing. The date of submission for any additional reports and evidence is one of the key dates given to you by the Tribunal.

The Tribunal will expect witnesses to:

- Use ethical, sound, evidence-based standards and principles;
- Give clear and unambiguous instructions;
- Use precise, factual and objective information that they can verify;
- Identify clearly what is and is not within their own knowledge;
- Accurately identify the needs that are in the child's interests – not influenced by a party's wishes, time constraints or lack of resources;
- Consider any previous or planned assessment relevant to their area of knowledge and practice to prevent the possibility of invalidating test scores;
- Give advice that is justifiable and supported by evidence, and is based on the child's needs;
- Consider any facts that may affect the advice they give;
- Be specific about any recommendations about provision, unless there are clearly stated reasons for not doing so;
- Identify any hypotheses (as opposed to facts or opinions).

Use the grid to note down ideas about what evidence you've got, what you might need and also who you might like to call as a witness.

Type of evidence e.g. statement/report	Name of professional	Document received? Y/N	Witness at hearing? Y/N	Comments

There is guidance for being a witness at a SEND Tribunal and this can be found at:
<https://www.gov.uk/guidance/send-tribunal-if-youre-asked-to-be-a-witness>

Forms and the working document

Attendance form

If the Local Authority opposes the appeal you will be asked to complete and submit an attendance form to confirm who will be attending the hearing; this includes parents/young person, any legal representation, advocates and witnesses. You will find your deadline for submitting this form on your letter of registration.

Your Liaise Caseworker should be noted on the attendance form as a parental supporter not a witness or representative

Request for change form

If at any stage of the tribunal process you wish to make any changes to your appeal such as requesting:

- an extension of time to comply with a direction
- a change to the final hearing date
- permission to amend grounds of appeal

you will need to complete a form called '**SEND7 Request for Change**'. This can be found on the SEND Tribunal website in the forms section.

Before completing this form you will need to contact the Local Authority to make sure they have no objections to your request and you will need to include their response on the form. If you have not consulted the Local Authority first and do not include their response then your request may be returned to you.

The Working Document

If the Local Authority opposes the appeal then along with their response they must send the 'Working Document'.

The working document is usually an electronic copy of the EHC plan that goes back and forth between you and the Local Authority, to try and reach agreement on as many points as possible before the hearing. Both parties make amendments to the working document using a key. This is a standard key that can be found on the final page of tribunal registration letter. It should also be included on the front of the working document. The key looks like this:

FORMAT OF TEXT	WHAT IT MEANS
Normal type	Original EHC plan
<u>Underlined type</u> / strikethrough	Amendments/deletions agreed by both parties
Bold type	Parent's proposed amendments
Bold strikethrough	Parent's proposed deletions
<i>Italic type</i>	LA's proposed amendments
<i>italic strikethrough</i>	LA's proposed deletions

The Judge will need to see a copy of the final working document before the hearing – this will be emailed to the SEND Tribunal by the Local Authority. Any points where you have not been able to reach agreement with the Local Authority will be decided by the Judge. Your Liaise Caseworker will be able to support you in understanding and amending the working document. It is important to note that anything added to the working document must be evidenced in a report.

Hearing preparation

The Bundle

At least 10 working days before the hearing date the Local Authority will send you a bundle of all the documentation submitted during the tribunal appeal. You need to go through the bundle thoroughly, to ensure that you are familiar with all the documents. This will help you to be prepared for the hearing. Your Liaise Caseworker will help you to go through the bundle and prepare any questions that you want to ask at the hearing.

During the hearing you will have the opportunity to question the Local Authority representative and the witnesses. The Local Authority representative will also be able to question you.

It would be a good idea to have a list of questions that you think you might need to ask the Local Authority representative and the witnesses, and take this list with you to the hearing.

Use this space to write down some questions you could ask the Local Authority representative/witnesses:

Telephone case management hearing

In some appeals there may be a telephone case management hearing that takes place before the final hearing. This is to check whether there needs to be any judicial input to make sure the hearing runs smoothly. There might be discussions about:

- What agreements have already been made with the Local Authority and whether your position has changed
- Whether it is necessary to call all of your witnesses
- If there is further evidence required and whether the hearing needs to be postponed in order to get this

You can prepare for this by reading through all the evidence you have received and making sure you know what has and hasn't been agreed already.

Opening and closing statements

In the hearing you may be asked by the Judge to give an opening and closing statement. It is best if you can have these prepared before you go.

These statements should:

- be formal
- be concise and to the point
- include the voice of the child. What is it that the child wants? Not just what you want for them.

Your opening statement might include the following:

- why you're appealing and what you hope to achieve
- what you've done to try to resolve the case before going to tribunal
- brief explanation of the evidence and legislation you are using to support your appeal

Your closing statement should be a summary of the points you made in the appeal - this might change on the day so be prepared to be flexible. You may like to have some notes prepared for this, but often you will be given some time on the day to prepare this.

On the next page you can make some notes in preparation for writing your opening statement.

Why are you making this appeal?

What do you hope to achieve from this appeal?

How have you tried to resolve the case before going to tribunal?

What legislation supports your appeal?

What key pieces of evidence support your appeal?

The Hearing

The tribunal panel members are a tribunal judge who is legally qualified, an SEN and/or disability specialist member and a health and/or social care specialist member.

Appeal hearings are held via video conference call. Hearings are fixed to usually start at 10am or 2pm and the length of your hearing will depend on the issues in the appeal and the number of witnesses coming. It is suggested that you keep the whole day free for the hearing.

There are several expectations from all parties:

- behave in a calm and polite manner;
- dress smartly;
- speak to professionals respectfully. The most common modes of address at a tribunal are 'Sir/Madam' for the Tribunal Judge and 'Colleagues' for all other members.

If you would like your child/young person to attend the hearing and give their own evidence they are welcome to join the video call to do this. If your child/young person would like to contribute but they are unable to, you can source and request an advocate for them to attend and speak on the child's behalf. You must make sure any advocate is detailed on the attendance form that is submitted.

Post hearing: what happens next?

The Tribunal, having considered all the relevant and available evidence will determine whether the Local Authority's decision is compliant with both the relevant law and the SEND Code of Practice and, within 2 weeks, issue an order to the LA.

Once the decision is issued, the Local Authority **must** carry out the order within the following fixed periods:

- To start an EHC needs assessment or reassessment process – four weeks
- To make/amend an 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

If the Local Authority does not keep to the order within those timeframes, you can 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.

What if you do not agree with the Tribunal decision?

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

If you think the decision is wrong in law, you can appeal to the Upper Tribunal but you must first ask for permission to appeal. Guidance on how to apply for permission will be included with your decision letter. The Local Authority can also appeal to the Upper Tribunal if they do not agree with the Tribunal decision. It is important to remember that you won't be able to appeal the decision if you are unhappy with the outcome, only if you believe that the decision has not been made in line with the law.

SEND National Trial – Single route of redress

Health and/or social care must give detailed written reasons in response to recommendations within five weeks of receiving the Tribunal's decision if they do not wish to accept the recommendations. You can then challenge that decision by referral to the Ombudsman or by Judicial Review.

Your legal representation options

The majority of parents do not have any legal representative at their SEND Tribunal appeal. If you would like further support for your case (in addition to Liaise), you may want to consider the following options:

IPSEA

You can get advice about your appeal from IPSEA's Tribunal Helpline. This service isn't available if you are already being supported by a solicitor or other advocate. As part of this call, IPSEA also assesses whether you need casework support from the Tribunal Support Service.

You can find more information and the booking system for the SEND Tribunal helpline at www.ipsea.org.uk

Legal Aid

The type of legal aid available in the SEND Tribunal is known as 'legal help'. A parent or young person eligible for this will receive support from a solicitor to prepare the case. It does not cover having a representative to attend the hearing. If you are on a low income or receiving certain types of benefits, you may be eligible for this legal help.

For more information, the legal aid eligibility key card and the online application form please visit the IPSEA website detailed above.

Solicitor

If you decide you would like a legal representative at the hearing, you will need to pay for a solicitor. Whilst we cannot recommend specific solicitors, here are some firms which have a specialist SEND tribunal department:

- Irwin Mitchell – www.irwinmitchell.com
- HCB Education Law Solicitors – www.hcbgroup.com
- Langleys – www.langleys.com
- SEN Expert Solicitors - www.senexpertsolicitors.co.uk

Frequently asked questions

Pre-hearing

1. Where do I get the forms? Will Liaise complete them for me?

All forms relevant to the SEND Tribunal can be found at:

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

You are required to fill out the forms yourself, and Liaise can support you to do this.

2. How do I change the date when the additional evidence needs to be submitted?

If you know that an assessment or report will not be available until after the evidence deadline then you need to let the SEND Tribunal know and seek an extension (using the "Request for changes" form). It is possible to apply for late evidence to be submitted after this deadline, but it will be up to the SEND Tribunal as to whether or not this will be accepted.

3. How will I find out who the LA's witnesses are?

The LA is required to complete an attendance form and you will find out this information when you receive the appeal bundle at least 10 working days before the hearing.

It can be known for the LA to bring different witnesses and different representatives than those listed on the attendance form. You should be aware that this can happen.

4. Can I change my appeal after I have submitted my original paperwork?

Once the appeal has been registered, SEND Tribunal must agree to any changes to the grounds of appeal. A request must be made in writing on the "Request for changes" form. On the form, set out the changes you want to make and explain the reasons for asking for the amendments and send a copy of the form to the Local Authority and to the Tribunal.

5. What happens if the Local Authority does not oppose (challenge) the appeal?

If the LA concedes at the time of their initial response, the Tribunal will end and a tribunal order will be issued detailing what the LA is instructed to do.

If the LA concedes during any other point during the process, there will be a conversation between you, the LA and the tribunal regarding how the appeal will be closed.

If the appeal is about a decision not to carry out an EHC Needs Assessment or re-assessment, not to issue an EHC Plan, not to change the school named in an EHC Plan that is over one year old or to no longer maintain an EHC Plan, and the Local Authority does not oppose it, the appeal will automatically come to an end. The Local Authority will have to comply with fixed time limits detailed in the issued tribunal order.

If the Local Authority agrees to change the contents of the EHC Plan and you are satisfied with the outcome, you can withdraw the appeal or ask the Tribunal to order the Local Authority to change the EHC Plan in the way you have agreed by making a consent order.

6. Can I withdraw my appeal?

If you and the Local Authority come to agreement before the SEND Tribunal Hearing you may wish to withdraw your appeal. If you inform the SEND Tribunal that you want to withdraw, permission will usually be granted if it is more than 3 weeks before the hearing. The application must be made on the "Request for changes" form. A request to withdraw the appeal less than 15 working days before the hearing may be refused and both parties required to attend before a judge to explain the reasons for the late settlement of the appeal.

7. What if the Local Authority does not provide a response?

If the Local Authority does not send a response by the deadline, the SEND Tribunal will write to the Local Authority asking for an explanation for their failure to respond, or failure to respond in time. A tribunal judge will consider any reply the Local Authority gives and will decide what should happen. If the Local Authority is barred from further involvement, SEND Tribunal will decide whether your case can be dealt with on the papers or whether there should be a hearing, which the Local Authority would not attend.

8. What happens if a witness refuses to attend the hearing?

If someone refuses to attend, you can ask the SEND Tribunal to issue a witness summons to require them to attend. You should complete a request for changes form detailing why you feel they should attend and why they cannot provide their evidence solely in written format (e.g. through a report submitted to the Tribunal). The SEND Tribunal must receive this request at least 15 working days before the hearing.

Hearing Day

1. Can I submit additional evidence on the day of the tribunal?

As a general rule, all evidence must be produced before the hearing in accordance with the timescales given by the SEND Tribunal. However, they can consider late evidence on the day.

If you submit additional evidence on the day, the LA will then be asked at the start of the hearing if they have any objections to the submission of the late evidence (this process would be the same if the LA submitted late evidence and you would be asked if you object). The LA may produce late evidence which has not been included in the Tribunal bundle and if this happens, you will be asked if you have any objections to this being included.

2. Who else attend the hearing with me? Can someone talk on my behalf?

Anyone who is a parent of the child may come to the hearing. You can also have a representative at the hearing whether or not you attend yourself. In addition, your witness(es) will also attend.

You must inform the SEND Tribunal on the attendance form who will be attending as if you do not complete the form, the witnesses may not be able to take part or the hearing may be struck out (cancelled).

Glossary

Appellant/ Claimant – The party who brings their claim against the Respondent in certain cases

Barrister – A qualified lawyer. They are usually asked to work on cases by solicitors. A barrister may also be called 'counsel'.

Bundle – all the documents submitted in the appeal will be issued in one bundle marked into sections to identify the parents' evidence, the LA's evidence, requests, directions and orders.

Clerk – A clerk is one of the administration members of staff within the tribunal service. They will handle letters, emails and phone calls but cannot give legal advice.

Cross examination – the set of questions asked of a witness at the hearing by the representative of an opposing party.

Evidence – The means by which something is proved. Written evidence may be statements, reports or other documents. Oral evidence is the spoken evidence of a witness in court.

Examination in chief – the set of questions asked of a witness at the hearing by their own representative

Judgement – the decision of the tribunal

Non-binding recommendations - recommendations that are not legally binding but expected to be followed

Working document – an electronic copy of the EHC plan that goes back and forth between the family and the Local Authority. Both parties will make amendments using a standard key