

Appealing against an SEN decision

This information is about appealing against a SEN decision in relation to an Education, Health & Care Plan (EHCP). This fact sheet covers the processes for appeal through mediation and the First-Tier Tribunal (SENDIST).

What can I appeal against?

The SEND Code of Practice states:



Parents (in relation to children from 0 to the end of compulsory schooling) and young people (over compulsory school age until they reach age 25) can appeal to the Tribunal about EHC needs assessments and EHC plans, following contact with a mediation adviser in most cases (see paragraph 11.18). Young people can register an appeal in their name but can also have their parents' help and support if needed. (11.44)

Parents & young people (16+) can appeal against:

- A decision by the Local Authority **not to carry out an EHC Needs Assessment or re-assessment**
- A decision by the Local Authority that it is **not necessary to issue an EHCP following an EHC Needs Assessment**
- The description of a child or young person's **Special Educational Needs (Section B) or Special Educational Provision (Section F)** specified in the EHCP
- The school or other institution; **type of school or other institution specified; or that no school or other institution is specified (section I)** in the EHCP
- An **amendment** to these **sections B, F, and I** of the EHCP
- A decision by the Local Authority **not to amend the EHCP following a review or re-assessment**
- A decision by the Local Authority to **cease to maintain** an EHCP

If you are thinking of appealing against:

- refusal to carry out an EHC needs assessment or re-assessment;
- refusal to issue an EHCP; the description of need/provision in the EHCP;
- the decision not to amend an EHCP; or



- the decision to cease to maintain an EHC Plan

You must firstly **consider** participating in mediation.

For appeals against school/setting placement (section I), you are not legally required to consider mediation and can lodge an appeal straight to the First-Tier Tribunal, should you wish to do so.

How do I appeal?

To lodge an appeal, you must first receive a copy of the final EHCP, along with a covering letter from the SEN Team that states your right of appeal. You have two months from the date of this letter sent from the Local Authority, or within one month of receiving the mediation certificate to lodge your appeal – whichever is later.

You can firstly consider whether there is value in arranging to meet with the Local Authority outside of the 'formal' mediation process to discuss your concerns and why you feel they may have made the wrong decision. You can facilitate this meeting by contacting your assigned caseworker. Their contact details are included on any written communication you have received from the SEN team.

Mediation:

Mediation is a voluntary process for parents and young people which can be used if agreements cannot be reached about matters related to EHC plans.

It is provided by a trained and accredited mediator who is independent of the Local Authority. You have two months from the date of the decision letter sent from the Local Authority to request mediation or a mediation certificate.

As explained above, the parent/carer/young person is legally required to consider mediation in the first instance when lodging an appeal about any matters other than issues regarding placement named/not named in section I of the EHCP.

You may feel that there is value in participating in mediation with the Local Authority about the matter which you are appealing against. Alternatively, you may feel that you have had many discussions (and possibly meetings) with the Local Authority about the issue you are appealing against and feel that engaging in mediation would not give you the different outcome you wish for.

It is your legal right to participate in mediation; equally, it is your legal right to decide not to participate in mediation.

If you are appealing against any valid reasons for appeal as above (apart from appealing against section I of the EHC plan), you must contact **Chapel Mediation and Consultancy Services on 07792 227526 / 0183 363 0309** to either arrange a mediation session with the Local Authority, or to obtain a mediation certificate to verify that you have considered mediation.

It is only once a mediation certificate has been obtained (either through participation or consideration) that an appeal can be lodged to the Tribunal, should the issue not be resolved through mediation. You have one month from the date of your mediation certificate to lodge an appeal to the SEND Tribunal.

Lodging an appeal to the Tribunal:

For issues relating to refusal to assess; refusal to issue; description of need/provision; refusal to amend an EHCP; or the decision to cease to maintain an EHCP – you must have a certificate from Chapel Mediation and Consultancy Services to verify that you have either participated in, or considered, mediation.

For issues relating to placement named/not named in section I of the EHCP, you do not need this certificate and you can lodge your appeal straight to the Tribunal.

<https://www.gov.uk/appeal-ehc-plan-decision> provides the step-by-step processes for lodging an appeal to the Tribunal. You can also speak to one of the SENDIASS Officers for further advice around lodging an appeal to the Tribunal.

Appealing as a parent/young person:

You can appeal as a parent if you have parental responsibility for the child, or if you are their foster parent/carer. The child must be under or of statutory school age (16). If your child is over statutory school age (16+), they may be able to lodge the appeal themselves.

If you are aged between 16-25 years old, you may be able to bring the appeal forward on your own behalf.

The SEND Code of Practice states:



A Young Person is aged 16 or over and under 25 years old.

It should always be presumed that a Young Person has the mental capacity to make an appeal to the Tribunal. An appeal made by a Young Person will often be with the support of an advocate. An advocate can be a parent, family member or other individual, including someone who is paid to do so.

A Young Person can also appoint a representative to act on their behalf during the appeal process, including at the hearing.

If a Young Person cannot bring an appeal themselves – making an appeal as an Alternative Person?



If a Young Person does not have the mental capacity to bring an appeal and/or to make decisions about the appeal then it can be brought by an Alternative Person, acting in the best interest of the young person. This will be any Deputy appointed by the Court of Protection or if this has not happened, then usually, a young person's parents. It could also be a family member or someone from the LA's Social Care team. The Tribunal will still want to know what the Young Person's views are on the issues in the appeal, but it is the views of the Alternative Person which they will consider in deciding the appeal. An Alternative Person can also appoint a representative during the appeal process including at the hearing if they wish to do so.

Whether you are lodging an appeal as a parent, or as a young person for yourself:

If you are appealing against the Local Authority's decision not to carry out an EHC Needs Assessment (refusal to assess), you need to download and fill in form SEND 35A. (*NB: appeals relating to refusal to assess decisions will be decided through a paper hearing, meaning that the Tribunal's decision will be given based on evidence provided, and an oral hearing will not be arranged unless specifically requested*). For all other appeals, you need to download and fill in form SEND35.

Please be aware that appeals are evidence-based, and there is a checklist on both forms for evidence that must be included with the forms.

For appeals relating to placement (Section I), you should also send in basic information about the schools you are appealing against & the school you are appealing for a place in; this should include their OFSTED reports and their prospectus's, and what provision they can offer, if you have this information.

What happens once I've sent the form & evidence in?

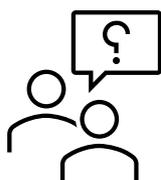
- After you send in your appeal, the SEND Tribunal will reply within 10 working days (working days do not include Saturdays, Sundays, bank holidays, any day between 25 December to 1 January, or any day in August) of registering your appeal.
- In this registration letter, the SEND Tribunal will tell you about important dates. It will tell you when the LA are required to respond to your appeal, give you a deadline to send further evidence and tell you when the hearing date will be. (Please note: you will not be given the hearing time or venue until at least 10 working days before the hearing is due to take place. The Tribunal endeavours to always hold hearings within 2 hours of your postcode).
- The hearing date will be approximately 12 weeks from the date your appeal was registered (remember, for refusal to assess appeals, there will be no physical hearing).

- At the same time, the SEND Tribunal will write to the LA, sending them a copy of your appeal documents.
- The LA will need to submit its response to the SEND Tribunal within 30 working days of receiving your appeal documents from the SEND Tribunal. The LA must state whether it opposes your appeal and why. The LA must send you a copy of its response at the same time: tell the SEND Tribunal if you are not sent this.
- Ensure that any evidence you didn't send in with your appeal form, or any new evidence, is sent to the SEND Tribunal by the deadline set. Always send a copy to the LA at the same time.
- At least 10 working days before the hearing, the LA will send you and the SEND Tribunal the 'bundle', a page-numbered set of the documents the SEND Tribunal has been sent in the case.

You should also think about who you may like to be present at the hearing as your witness(es). These will generally be professionals who know your child and understand their needs well (e.g. Educational Psychologist, Speech & Language Therapist, Occupational Therapist, Physiotherapist, Psychiatrist, SENco/teacher, Deputy Head/Headteacher etc). It's best to let your witness(es) know the hearing date as soon as possible. You can have up to 3 witnesses but can request more if necessary – this decision will be at the discretion of the Tribunal.

What happens at the hearing?

- You should always bring the bundle with you to the hearing. It is helpful to go through the bundle prior to the hearing and highlight/mark any points you'd like to raise during the hearing.
- The hearing will be led by a panel. For most hearings, this will be two people – a judge and a specialist panel member who will have experience of children and young people with SEND. There may be a third member of a panel present, but this is unusual.
- There are a host of videos available on YouTube provided by the Tribunal service to represent what a hearing is like. You can also access these via the service Padlet – <https://padlet.com/stsendiass/1>.
- Be aware that the judge is likely to ask you questions. You can also ask questions to the LA's witnesses so it's a good idea to prepare some that could support your position.
- The Tribunal will let you know the outcome of the hearing within 10 working days of the hearing being held.



SENDIASS can provide support and guidance around the appeals process. You can access this support by completing a referral from the SENDIASS website, getting in touch with your IAS Officer or by getting in touch via the details below:

0191 424 6345 / SENDIASS@southtyneside.gov.uk

Appeal evidence bank

Below are some examples of evidence that can be used to support your appeal, along with suggestions of what the evidence will provide.

Refusal to assess

Type of evidence	The evidence will provide...
Diagnosis letter/ Paediatrician Reports	Evidence of SEN/ any recent changes to the CYP's medical condition/diagnosis
IEP plan/graduated approach evidence	Shows support the school has been putting in place prior to the EHCNA request being made
PSP/BOSS reports if applicable	Showing behaviour choices could be the result of unmet needs
School progress report	Shows progress made/ not made with/without support
EHA/TAC minutes	Background information
Reports from professionals – Occupational Therapist/Speech and Language Therapist/STT/0-19 Team/Pupil Reintegration	Do these identify specific recommendations? The CYP's needs?

Refusal to issue an EHC plan

Type of evidence	The evidence will provide...
All of the above	
Private EP report	Details of needs/provision required not identified in EHCNA
Private OT report	Details of needs/provision required not identified in EHCNA
SALT report	Details of needs/provision required not identified in EHCNA
Witness statement from school	How the school cannot provide what is included within the EHCNA outline without funding. Timetable of support needed/ hours of support needed Also, outlining any needs/provision required not identified in the EHCNA
Voice of Child	To capture the voice of the child/YP - How the child/YP feels about the support they are receiving/not receiving

EHC plan contents appeal – special vs mainstream appeal

Type of evidence	The evidence will provide...
All of the above	
Special school prospectus/Ofsted report	Outlining the facilities/provision in place which would meet the need of the child
Report/ witness statement from mainstream school	If applicable – outlining how a mainstream setting cannot meet need
Transport cost	If applicable – outlining difference in cost
Fees if independent special school	If applicable – outlining difference in cost
If independent school – a letter showing that there is a place available	Tribunal service will request this if not submitted
Annual Review recommendations (if applicable)	What is the outcome of the AR? Have the school been reviewing the EHCP adequately? Exhausted all options? Sought appropriate support of outside agencies?

EHC plan contents appeal

Type of evidence	The evidence will provide...
All of the above	
Social care assessment/ Child in Need report	Applicable if National Trial
any medical reports/letters issued after the EHCNA	Up to date information
Any professional reports issued since the EHCP was issued/ last amended	Up to date information
Witness statements/reports from setting or professionals	Do these identify specific recommendations? The CYP's needs? Have these all been included?

Number of pages of evidence

In addition to the core Tribunal Bundle (Part A) and EHCP plus appendices if applicable in a SEN appeal (Part B), both parties will be automatically entitled to submit a limited number of pages of evidence depending on the type of appeal or claim registered by the Tribunal. This will be taken from the information on the registration form.

The limits for each party are:

Refusal to carry out an EHC Needs Assessment/reassessment appeals 100 pages each party

Refusal to issue an EHC Plan 100 pages each party

Appeal against Section B and/or Section F of an EHC Plan – specification of special educational needs and/or special educational provision 100 pages in total each party

Appeal against Section I of an EHC Plan – educational placement 75 pages each party

Decision to Cease to Maintain an EHC Plan 75 pages each party Plus, if also appealing sections of the EHC plan: Sections B and/or F = 100 pages each party Section I = 75 pages each party

Appeal following Annual Review decision = page limits applicable for Parts/Sections under appeal i.e. Section B, F & I = 100 + 75 = 175 pages each per party or Section B and/or F = 100 pages each per party

Request for the Tribunal to make a Recommendation concerning health issues under the National Trial 50 pages each party

Request for the Tribunal to make a Recommendation concerning social care issues under the National Trial 50 pages each party

Claim of disability discrimination 200 pages each per party