



SENDIASS guide to appealing to the SEND Tribunal

Sometimes parents and the local authority (LA) disagree, and it proves impossible to resolve this informally. In some circumstances, you can then choose to appeal to tribunal to change the LA decision, particularly in relation to education, health and care plans (EHCPs). The decision of the tribunal is legally binding on matters relating to education.

Making an appeal to the [First Tier Tribunal \(Special Educational Needs and Disability\)](#) can be daunting, but it is doable. Amaze SENDIASS can help you understand whether you have a right to appeal, how the process works and how make a start on it.

We have prepared this short guide as follow up information for parents who have had some information and advice about a possible appeal. In this guide, we explain the basics about appeals and give contact details for other places you can get information that is more detailed, or help with going to tribunal.

When do you have a right to appeal to tribunal?

You can appeal to the First Tier Tribunal if:

- the LA refuses to assess your child for an EHCP after you or the school have requested this
- the LA decides an EHCP is not needed after assessing your child
- you disagree with the EHCP sections that describe your child's SEN (Section B), the special educational provision (Section F) or the school or type of school named (Section I)
- you disagree with an amendment to any of these sections
- the LA refuse to re-assess your child
- the LA decide not to amend the EHCP after review or re-assessment
- the LA decides to stop maintaining the EHCP

Please note that, if you have concerns about the parts of an EHCP that relate to your child's **health and social care needs and provision**, you may also ask the Tribunal to consider them when you lodge an appeal about education. There must be an education component to the appeal. A Tribunal decision about health and social care is a recommendation, rather than being legally binding, but the tribunal would expect any service refusing to implement the recommendations to give them very solid justification. If you don't, or can't, approach the tribunal, you can still use



disagreement resolution and/or mediation if you are unhappy with health and care decisions, and then use the relevant complaints procedures if necessary.

If your son or daughter is **16 or over**, the right to appeal sits with them. They can appeal themselves where they have capacity to make the decision. Their representative or parents can appeal where they lack capacity. Young people can register an appeal in their name but can also have their parents' help and support if needed.

You have **two months from the date of the LA decision** to appeal, or within one month of receiving a mediation certificate (see below). It is whichever date falls furthest away that will be the deadline.

If you do not agree with the LA, it may be worth having at least one more try at resolving things locally. You can ask for a meeting with your casework officer/assessment and planning officer at the LA.

There is also a **disagreement resolution** process and the option of independent **mediation**. In most cases, you have to consider mediation before you can lodge your appeal (see below).

When you do have a right of appeal, making use of disagreement resolution or mediation does not stop you also making an appeal. The aim of disagreement resolution and mediation is to try to resolve some disagreements that might otherwise have ended up at tribunal, which can be very costly.

Mediation

Mediation must be confidential, voluntary, informal, non-legalistic and accessible

- A mediator will need to be contacted within two months of the decision being appealed. Following initial contact, the mediator will then provide mediation information.
- If a parent or young person decides **not** to pursue mediation, a certificate must be issued within three working days and within the two-month time limit.
- If the parent or young person decides to pursue mediation, then the local authority are under a duty to ensure this happens within 30 days.
- If the mediation relates to health needs the local authority **must** inform each relevant commissioning body within three days about these matters.
- When mediation has finished, the mediator must issue a certificate, again within three working days.



Parents or young people do not have to attend mediation and going to mediation does not mean a parent or young person cannot appeal. At tribunal, a parent or young person is not disadvantaged if they did not attend mediation.

Parents and young people do not need to contact the mediator to obtain a certificate if they wish to appeal placement only. However, when appealing the placement, we would recommend that you review Sections B (SEN needs) and F (SEN provision) of the EHCP as these sections will inform the placement. By including this EHCP content in your appeal, a mediation certificate will be required.

The appeal can be lodged within two months of the LA decision, or within one month of receiving the mediation certificate, whichever is later.

The tribunal

The tribunal is an independent body that hears parents' appeals against LA decisions on statutory assessments and EHCPs. It also deals with some claims of unlawful disability discrimination in education.

The tribunal can change the local authority's decision. It can:

- Dismiss the case
- Order LA to carry out an EHC needs assessment
- Order LA to make and maintain an EHCP
- Maintain an EHCP with amendments
- Order LA to reconsider a weakness (e.g. missing information)
- Decide if special educational provision (SEP) is appropriate – this will take into account education and training outcomes in Section E
- Whether SEP will enable progress towards outcomes and whether the outcomes are ambitious or not
- If the tribunal orders to re-consider special educational provision, the LA will also be required to review if outcomes remain appropriate.

To lodge the appeal, parents or young people will need to access the relevant forms from the gov.uk website, supply a copy of the mediation certificate, give reasons why they are appealing and why they disagree with the decisions. You also need to send all documentation. You can find an introduction to the tribunal, the link to download the form (SEND 35) to lodge an appeal and the Tribunal Service guide to appeals here: <https://www.gov.uk/government/publications/form-send35-special-educational-needs-and-disability-tribunal-appeal>

This is just the start of the process and, whilst the tribunal encourages parents to



represent themselves at appeals and will take care to treat them fairly, it can be a daunting experience. Parents or young people will need to be well prepared and have access to the best possible advice and support.

Amaze SENDIASS is not able to represent parents at SEN tribunals but we can give you some advice and support.

Most tribunals are conducted online in video hearings and there is a useful explanation here: [Video hearings at the Special Educational Needs and Disability Tribunal - YouTube](#)

Where to find more information and help?

- **First Tier Tribunal (SEND):** link to appeal forms, info and 'how to appeal' DVD: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>
- **SEND Code of Practice:** the code of practice which tells LAs how to carry out their duties with regard to SEN. You will need this to refer to if you appeal. See <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>
- **IPSEA (Independent Parental Special Education Advice):** resources, advice line, tribunal advice line. IPSEA have a detailed guide on "how to appeal about refusal to assess" <https://www.ipsea.org.uk/>
- **Child Law Advice Service:** advice line, resources <http://childlawadvice.org.uk/>
- **Contact:** National SEND advice line and online resources. Not specific tribunal help: <https://contact.org.uk>
- **Legal Aid (now called Legal Help):** legal advice and help with preparation but not representation for people on a low income. Involves a financial means test and case merit test of reasonable chance of succeeding. If the young person is appealing, they can apply for Legal Help. If you get Legal Help, this could cover a second expert opinion and preparing a written case. To check if you are eligible for Legal Help see: <https://www.gov.uk/civil-legal-advice>

If you cannot find someone able to help you prepare your appeal, you may decide to think about instructing a solicitor, but this can be costly. If you take this route, make sure they have a specialism in education law. You could look for a member of the Education Law Association: www.educationlawassociation.org.uk

Amaze SENDIASS is the Special Educational Needs and Disability Information, Advice and Support service for East Sussex and Brighton & Hove. We offer impartial and confidential support with anything to do with special educational needs and disabilities for 0-25 year olds. Please contact us on 01273 772289 or by email on sendiass@amazesussex.org.uk if you would like further advice and support.