



## SENDIASS guide to appeals – special educational needs and special educational provision of an EHC Plan

At the end of the education, health care needs assessment your child will be issued with a an education, health and care (EHC) plan if the local authority (LA) feels that their level of educational need requires extra funding that can only be provided through an EHC plan.

The final plan is a legal document that outlines the special educational, health and social care needs of your child or young person and the educational, health and social care provision they require to meet these needs. It will also detail the outcomes you wish them to work towards and achieve.

If you do not agree with the final plan then you have the right to appeal to the [First Tier Tribunal \(Special Educational Needs and Disability\)](#) about certain aspects of the plan. Please note that currently the tribunal only has powers to direct local authorities to act upon specific sections of the plan. These are the description of special educational needs in section B and the special educational provision in section F. You can also appeal the school placement in section I. Please see our separate guide to this.

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 you decide you want to appeal the contents of your child's plan you must either go to mediation or at least show you have considered it. You must contact the mediation service, whose details will be included in the covering letter sent with the final plan. If you do not want mediation, you must ask the mediation service to issue you with an exemption certificate.

There is a time limit for you to lodge an appeal. You have two months from the date the final EHC plan was issued or one month from the issue of the mediation exemption certificate, whichever is the later. If you need time to gather more evidence about your child's needs you could delay lodging an appeal until the two months are nearly up and then contact the mediation service to get an exemption certificate. That would give you an extra month before you needed to lodge the appeal. For more information on mediation, please see our guide to **Mediation**

## Section B appeal – description of special educational needs

### ***The SEND Code of Practice section 9.69 states that in Section B:***

1. All of the child or young person's identified special educational needs must be specified.
2. The SEN section may include needs for health and social care provision that are treated as special educational provision e.g. physiotherapy that enables the child to engage in education.

You may feel that the local authority has not included all of your child's special educational needs; they have not described them accurately or specifically enough and have not taken into account the wider implications of these on their lives.

## Section F – special educational provision

### ***SEND Code of Practice section 9.69 states that:***

1. Provision must be detailed and specific and should normally be quantified, for example, in terms of the type, hours and frequency of support and level of expertise, including where this support is secured through a Personal Budget
2. Provision must be specified for each and every need specified in section B. It should be clear how the provision will support achievement of the outcomes
3. Where health or social care provision educates or trains a child or young person, it must appear in this section (see paragraph 9.73)

4. There should be clarity as to how advice and information gathered has informed the provision specified. Where the local authority has departed from that advice, they should say so and give reasons for it
5. In some cases, flexibility will be required to meet the changing needs of the child or young person including flexibility in the use of a Personal Budget
6. The plan should specify:
  - any appropriate facilities and equipment, staffing arrangements and curriculum
  - any appropriate modifications to the application of the national curriculum, where relevant
  - any appropriate exclusions from the application of the national curriculum or the course being studied in a post -16 setting, in detail, and the provision which it is proposed to substitute for any such exclusions in order to maintain a balanced and broadly based curriculum
  - where residential accommodation is appropriate

You may feel that the local authority has failed to include **specific** details about the support your child requires. For example, these may include the number of sessions in a small group activity, the length of these sessions and the size of the group. The SEND Code of Practice clearly states (see above) the level of detail that should be included in your child's plan and if the local authority has failed to do this, then it can lead to wide interpretation by the school. The use of terms such as 'access to' and 'opportunities for' are not helpful in a legal document as they can vary widely in different settings.

The local authority may not have included provision that addresses every need identified in section B.

## Lodging an appeal

In order to lodge an appeal, you will need to contact the **First Tier Tribunal (Special Educational Needs and Disability)**. Visit <https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>, email [send@justice.gov.uk](mailto:send@justice.gov.uk) or call 0300 303 5857.

If you are the parent carer of a child, aged 0-15, then you can lodge an appeal with the tribunal. If the appeal concerns a young person aged 16-25 (and they have



mental capacity) they should lodge an appeal themselves. They may choose to ask an advocate or representative (usually their parent) to act on their behalf. If they do not have the capacity to lodge an appeal themselves then it is possible for a representative to lodge the appeal on their behalf.

## Costs?

The tribunal process has been made as simple as possible so that you can prepare the paperwork and represent yourself. However, if you wish to seek legal advice and support, please be aware that this can be very expensive; the average tribunal with legal costs can be in excess of £10,000. Thankfully, you do not have to pay the costs of the LA, whatever the outcome. Also, you may qualify for legal aid. For more information on this, please see our '**Guide to Legal Aid**'.

## The appeal process

When you lodge the appeal with the First Tier Tribunal, you will be required to complete a couple of **forms**, one to evidence that you have a certificate from the mediation service and one to lodge the appeal. You will need to send in a copy of your child's final EHC plan, clearly identifying the content you disagree with and writing the suggested amendments that you would like the tribunal to consider. You will also need to submit the exemption certificate from the mediation service and any additional information that supports your reasons for the appeal. Think carefully about the changes you wish the local authority to make to the plan and the content you would like them to add.

Once the tribunal has lodged your appeal, they will send you a letter to notify you of the hearing date and the date by which they need to receive all the information.

### **TIP**

It is helpful to make a note of key dates on a calendar so that you can notify the tribunal if you have not received the paperwork in time for the hearing.

Within **30 days**, the local authority will have to prepare a paperwork response to the appeal. They must send you a copy of this. We recommend that you read this carefully as it will help you to gain a better understanding of the local authority's position and to be able to contribute your response and evidence. If you have not received this by the **30 days**, we advise you to contact the tribunal. The evidence you have will be added to this to make a combined '**working document**', which the



tribunal will use in the hearing. Please note that there is a **100-page** limit to the working document. If the local authority has told you that you can't submit any more paperwork it is possible to request permission from the tribunal to waive this page limit.

**TIP**

It is best to keep any additional information you submit to the tribunal as up to date and relevant as possible. Avoid including historical information that does not reflect your child or young person's current needs and the provision they currently require.

The tribunal will expect that during the process the LA and you will continue to negotiate and review the paperwork. This can mean that, by the time of the hearing, the working document may be different to the original submitted at the time the appeal was lodged.

You may need to gather more evidence about your child's needs and the support they require from further assessments. Any private Educational Psychologists or therapist assessments can increase the overall cost of the appeal. Alternatively, the tribunal may order the local authority to carry out further assessments if it is evident from the paperwork that they should have done this during the original assessment process.

About **10 days before the hearing** date the tribunal will send you the final working document. It is advisable to read this carefully as it may contain some information from the local authority that you have not seen.

**TIP**

Highlight any points in the document that you specifically want to raise at the hearing.

You are entitled to take up to **three witnesses** to the hearing. They must expect to be questioned and have something meaningful to say. It is important that the tribunal is aware of who your witnesses will be on the day so that they can prepare their questions accordingly. As your appeal is about the content of the EHC plan, you may want expert witnesses to give evidence at the hearing. This can be particularly helpful if your child requires extra therapy support and may require evidence to be

given by the therapists who have assessed your child and have a clear understanding of their needs and the special educational provision they require to meet these needs.

### **TIP**

Confirm in advance the cost of your witnesses appearing at the tribunal.

In some cases, the local authority concedes before the case gets as far as a hearing. If they back down in this way, it is advisable to get this in writing so that you have evidence of this change in decision. Most cases, however, will progress to a hearing.

## **Tribunal hearings**

Hearings are a formal, legal, process but the tribunal is not intended to be combative. If you decide to take a representative or friend to support you on the day, you must let the tribunal know. A judge and a specialist member, who has specific knowledge of special educational needs, will oversee the hearing.

Hearings, particularly complex ones, may require you to attend a court but many are now conducted by video so you would not need to travel. If a video hearing is ordered and you are concerned that your internet connection is not good enough, there will also be the option of joining via phone. You would be sent joining instructions in advance of the hearing.

The judge will do their best to ensure that you feel involved, your voice is heard and that you are treated fairly. The aim of the hearing is to question both parties and their witnesses so that the judge and specialist member can gather as much evidence as possible. They will have already read the paperwork and will have decided which areas they would like to find out more about. Throughout the hearing, they will direct questions to each party and make sure that each person has time to respond and is not interrupted.

Hearings can take anything from a few hours to a whole day. **If you opt to take part in this trial then please note that the tribunal will expect the hearing to take 2 days.**



**TIP**

Refreshments may not be provided so it is important to prepare for this during the break times. Also, though children and young people are welcome to attend the hearing, childcare is not provided. If you do bring them along, be aware that they will not be in the court all day and may need looking after.

At the end of the hearing, each party will be allowed to summarise their views. The tribunal judge will ensure that the process is followed and will make their decision based on the paperwork submitted before the hearing and the evidence they have heard on the day.

In cases where the content of the plan is appealed, the judge will work through each page of the EHC plan in detail and ensure that any changes are written directly on to a copy of the plan. At the end of the hearing, it is usual for the judge to request that each party sign the bottom of each page of the plan. This ensures that there is a written signed record of any agreement.

**Following the hearing**

If the tribunal orders that the local authority must amend the EHC plan for your child, the local authority must do this within **5 weeks** of the court order.

If you feel there has been an error during the tribunal and you want to appeal this, then you have **28 days** to lodge an appeal.

Amaze’s SEND Information, Advice and Support Service (SENDIASS) can talk to you at any time throughout the appeal process. They can help you think about what to put on your appeal form; advise you about what evidence to provide; think about points you might want to raise at the hearing or any other questions that arise during the appeal.

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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](mailto:sendiass@amazesussex.org.uk) if you would like further advice and support.