

Some 'Top Tips' to First-tier Tribunal (Special Educational Needs and Disability)

Appeals Case Work



[Link to HM Courts & Tribunal Service - How to appeal a SEN Decision](#)



What the First-tier Tribunal (Special Educational Needs and Disability) does

The **First-tier Tribunal (Special Educational Needs and Disability)** is responsible for handling appeals against local authority decisions regarding special educational needs, including a refusal to:

- assess a child's educational, health and care (EHC) needs
- make a statement of their special educational needs
- reassess their special educational needs
- create an EHC plan
- change what is in a child's special educational needs statement or EHC plan
- maintain the statement or EHC plan

They also handle appeals against discrimination by schools or local authorities due to a child's disability.

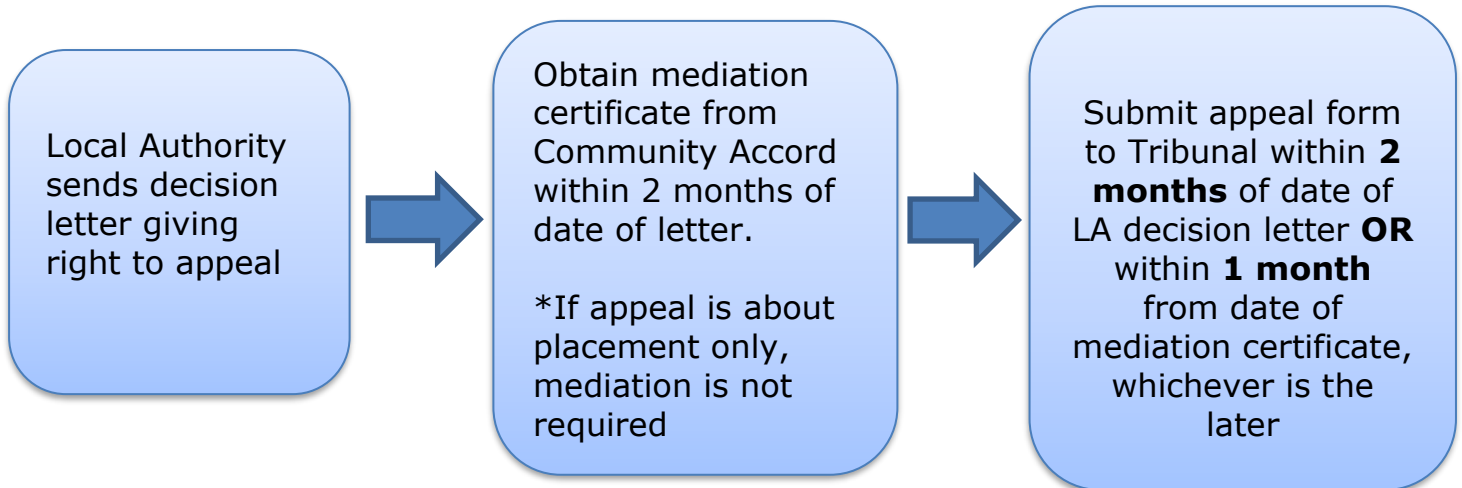
From 3rd April 2018, their jurisdiction was extended to include the power to make recommendations about health and social care issues in all appeals except refusal to secure an EHC needs assessment or re-assessment. The Department for Education's [national trial of extended powers for the tribunal](#) will run until August 2021.

From start to finish, the process of making an appeal can take up to five months depending on the type of case.

TOP TIP

The Tribunal has produced a set of six YouTube videos about the appeal process, including how to prepare for the hearing. You can watch them [here](#).

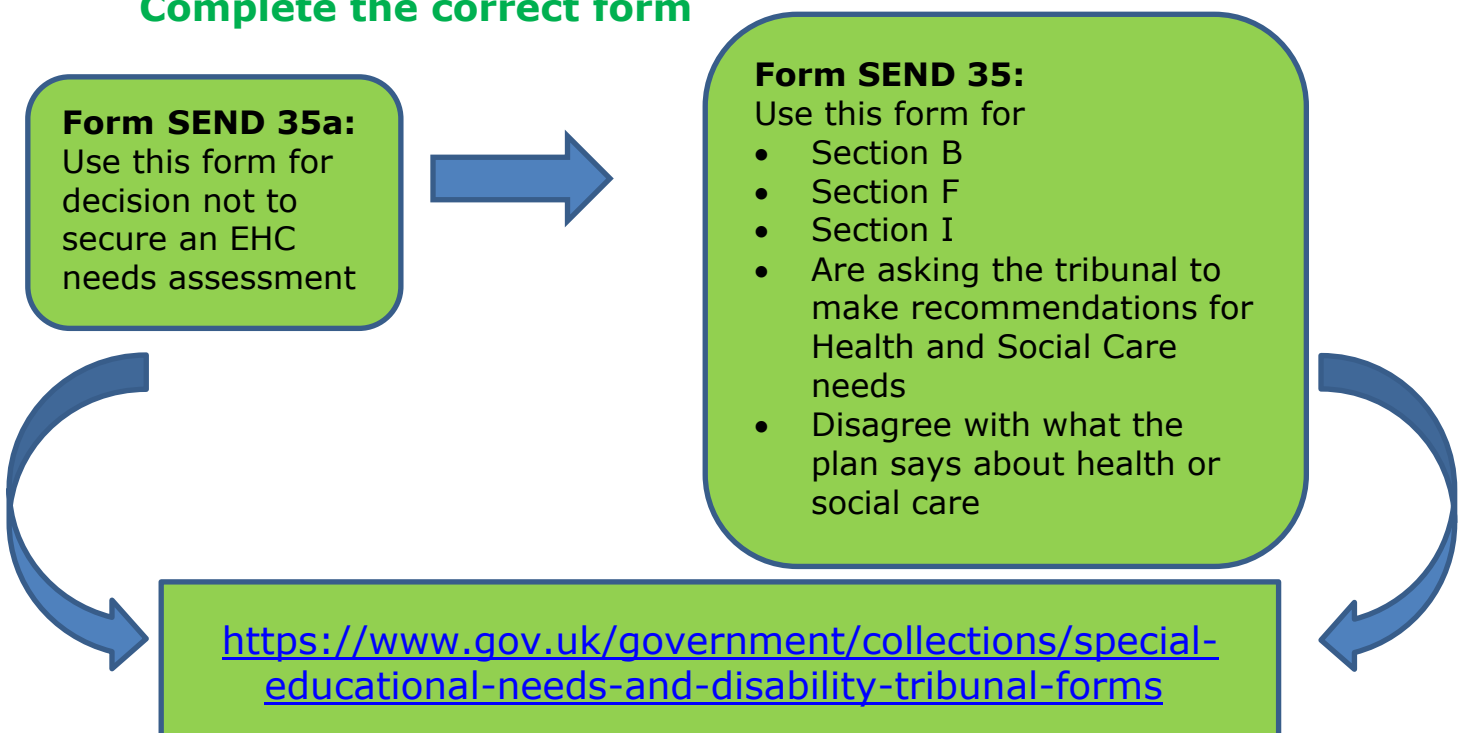
APPEAL FLOWCHART



Why are you appealing?

- Refusal to assess
- Refusal to issue a Plan
- Content of a Draft EHCP or Amended EHCP
- Ceasing of a Plan

Complete the correct form



TOP TIP

How to complete the application form:

Watch this YouTube video

<https://www.youtube.com/watch?v=3ORdqZAzuP8>

Preparation is everything!!

TOP TIP

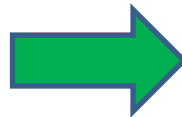
Check if eligible for Legal Aid?

Next

Get the supporting evidence together

Do:

- Be aware of page limits
- Send relevant evidence to support the facts



Do:

- Keep it short and to the point
- Separate /organise points
- Refer to any evidence
- Refer to the legal issues

TOP TIP

Filter through the facts and keep it relevant

Don't:

Get bogged down in the history/story – let the evidence (reports, letters etc.) speak for themselves

TOP TIP

Check the legal test has been met and Determine who has the burden of proof

If a parent/YP wants a mainstream school/college then Section 33 CAFA 2014 says the LA **must** comply with this unless:

1. It is against the wishes of parent or YP **or**
2. It is incompatible with the provision of efficient education for others **and** the LA **shows** there are no reasonable steps that it could take to prevent the incompatibility

However when a parent/YP appeals for an independent setting to be named in an EHCP the **onus is on parent/YP** to prove that none of the schools the LA is offering can meet need **or** the cost of the placement **will not** constitute unreasonable public expenditure

TOP TIP

Always consider appealing sections B & F when looking at the named setting in Section 'I'.

Consider these 3 steps:

1. **Section B – are the needs fully and correctly identified?**
2. **Section F - so what provision is required to meet identified need and is it all included?**
3. **Section I – if steps 1 & 2 are correct that should lead to what placement/setting should be named in 'I'**

Parent or YP can request:

- Maintained school or nursery (mainstream or special)
- Academy (mainstream or special)
- Non-maintained special school
- Section 41 school (independent)

Who can appeal?

Parents, in relation to children from 0 years to the end of compulsory schooling can appeal.

and

A young person, over compulsory school age until they reach age 25, who is either:

- in education, for example at a school or college - or trying to get into one
- taking part in an apprenticeship, internship or workplace scheme - or trying to get into one

A young person can also appeal if they are in custody (in prison or a young offender institution) if, they are over school leaving age but under 18.

YP cannot appeal if they are studying at university, or trying to get into one.

Young people can register an appeal in their own right but can also have their parents' help and support if needed.

If a young person does not have mental capacity then a parent may be able to appeal on their behalf.

TOP TIP

Check out IPSEA's update on remote hearings:

<https://www.ipsea.org.uk/news/send-tribunal-update-for-volunteers-parents-and-carers>

What existing evidence is there already?

Examples for evidence

- Recent Ofsted report
- Prospectus
- Written statements from relevant person involved with child/YP e.g.
 - Teachers/health professionals/specialist teachers/educational psychologists
 - Someone who knows child/YP from outside school
 - Parent
- Views of child/YP, either written by themselves/an advocate
- Any reports/assessments about the child/YP which the placement has produced/home school diaries /behaviour reports
- Any relevant information about the placement
- Details of cost of placement
- For an independent school, a letter from the school confirming they can offer the child/YP a place

What additional evidence do you need?

Keep evidence simple and accurate and cost free -use the free sources:

ico.org.uk for data – model letter. Need to narrow down what they need for the information.

For more information about different kinds of evidence, and how to gather evidence to support your appeal, see [here](#).

SUBMITTING THE APPEAL

Remember to include everything on the check list:

- Section 10 SEND 35
- Section 8 SEND 35a

With appeal form send the following:

- A list, in chronological order, of documents enclosed with appeal application
- All evidence supporting appeal
- A copy of the LA's decision letter
- Mediation certificate
- The consultation response letter

- Email to send@hmcts.gsi.gov.uk
- Write in 'subject line' of email **'NEW APPEAL TO BE REGISTERED FOR 'child's name'/ Email 1 of 5** (so on and so forth for each email sent depending on size of bundle).
- **For subsequent emails:**
'Current hearing date in the format of dd.mm.yy (if known); Subject matter; Case number and child's / young person's name
- **If paper based send recorded/special delivery and keep proof of postage**

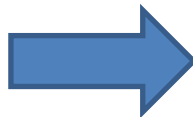
HM Courts & Tribunals Service
SEND Tribunal
1st Floor
Darlington Magistrates Court
Parkgate
Darlington
DL1 1RU

REMEMBER

- If sending by post don't send original documents
- Keep a copy of everything sent
- There is a page/bundle limit so make it relevant

ONCE AN APPEAL IS SUBMITTED

Tribunal send registration letter within 10 working days of registering appeal, together with timetable of appeal



- Hearing date (or the date the appeal will be considered if a refusal to assess)
- Directions and date by which the LA must send its response
- Directions and date by which parent/YP and the LA need to submit evidence
- Directions and date by which parent/YP need to send attendance form

TOP TIP

Diary the important deadlines in your calendar:

Week 0 - Appeal registered

Week 6 - LA response & LA attendance form

Week 7 - Parent attendance form

Week 8 - Final evidence submission deadline

Week 9 - LA issue bundle

Week 12 - Hearing

Week 14 - Onwards decision

- Hearing date set approximately 12 weeks from date appeal registered (**for refusal to assess there is no physical hearing**)
- SEND Tribunal send LA a copy of parent/YP's appeal documents
- LA responds to Tribunal and parent/YP within 30 working days
- Parent/YP sends any additional evidence by the deadline set by Tribunal and **must** send a copy to the LA at the same time
- At least 10 working days before hearing LA will send parent/YP and Tribunal a page-numbered set of **all** documentation that has already been submitted

THE HEARING

- Check that you have Wi-Fi and a good connection
- Make sure that the household doesn't have anything else in use i.e. Xbox etc.
- Tribunal hearings are digital and the tribunal can arrange for a parent to use a judicial building to access computers if needed

TOP TIP

Always use Google Chrome for the actual hearing

- Have a test run before the actual hearing so you know you know how to get on line
- Set up a What's App to keep in conversation with parent/YP/SENDIASS
- Be prepared to say a little about the child/young person at the start of the hearing. Give a background section, brief summary of the child and history leading up to current appeal
- It is useful to have a photo of the C/YP
- Address the Judge Sir or Madam
- The Judge will decide the structure and the flow of the hearing
- Remember the Tribunals role is 'inquisitorial' the Judge and the SEN experts will ask all relevant questions

TOP TIP

Be prepared in advance with a summing up draft of the main points you have raised – you can amend the draft as the hearing is going along

THE DECISION

Manage your expectations on a contents appeal, you may not get everything you want but it is unlikely it will end up being worse but you may not get everything.

The Tribunal panel will make their decision according to the evidence.

Post Hearing

The LA has to comply with time limit within which they carry out the tribunal order (SEND Reg 44)

Failure to comply is enforced by Judicial Review and the Tribunal has no role in this.

APPEALING

If you are unhappy about a decision the Local Authority has made about your child's special educational needs, in many cases you can appeal to the Upper Tribunal and should have legal representation if possible

The Tribunal has produced a set of six YouTube Videos about the appeal process, including how to prepare for the hearing. You can watch them [here](#).



Where to get help:

<https://www.barnardosendiass.org.uk/north-east-lincolnshire-sendiass/>

Useful addresses and contact numbers

Citizens Advice

www.citizensadvice.org.uk

Coram Children's Legal Centre

www.childrenslegalcentre.com

Community Accord

www.communityaccord.com

info@communityaccord.com

01274 223313

Legal Aid

www.gov.uk/legal-aid

Independent Panel for Special Educational Advice (IPSEA)

www.ipsea.org.uk

Advice Line:

0800 0184 016

National Autistic Society (NAS)

www.nas.org.uk

Tribunal Support Service:

0808 800 4102 (select Option 2)

Simpson Miller Solicitors

0808 129 3320

Special Educational Needs & Disability Tribunal (SEND Tribunal)

www.sendist.gov.uk

SEN Helpline:

01325 392 555

Discrimination helpline:

020 7925 5750

Contact

0808 808 3555

<https://contact.org.uk/>

More Top Tips



The Forms

- **SEND 35a** – Refusal to assess
- **SEND 7** – Request for changes
- **SEND 8** – Withdrawing the appeal
- **SEND 11** – Attendance form parents
- **SEND 11YP** – Attendance form young person
- **SEND 30** – Request for witness summons – if you have a reluctant witness, don't just send this form to ensure they attend, but worth them explaining to a witness to say that they are there because of the evidence in their area of expertise to the tribunal not to be on a side.
- **SEND 7** – Request for changes - this is a communication tool for both parties to speak to the tribunal.

TOP TIP

The “Noddy guide”

Google the ‘Noddy Guide’ which was set originally for a training guide for Judges. Useful to look at when you are looking at the content of a Plan.

<https://www.matrixlaw.co.uk/wp-content/uploads/2019/03/SEN-Noddy-Guide-March-2019.pdf>

TOP TIP

Freedom of Information

Freedom of Information Act 2000 is anything which is not in the public domain. Model letter is available from ico.org.uk – you need specific information to be able to support claim.

TOP TIP

Save as you are going along

Use a template in place of Section 3 – addendum to appeal form – gives you a structure.

You may need to add in extra headings such as transition/any time out of school – add a conclusion if waiting for evidence.

Save the form before amending it and after every section
save, save, save

TOP TIP

[Exclusion Resources - IASSN & Equality and Human Rights Commission](#)

To support pupils with special educational needs and disabilities who have been permanently excluded from school, the Information, Advice and Support Services Network (IASSN) in partnership with the Equality and Human Rights Commission (EHRC) have published resources for SENDIAS practitioners to appeal exclusions.

These practical resources are intended for SENDIAS practitioners to use when appealing a permanent exclusion, using legal arguments to challenge discriminatory decisions, and to feel confident in doing so. Underpinned by the Equality Act and clear to understand, they have already been effectively used by SENDIAS practitioners in exclusion appeals. You can download the resources [here](#).