

SEND Tribunals



What is a SEND Tribunal?

The SEND Tribunal hears appeals against decisions made by the local authorities in relation to children's and young people's assessments and Education, Health and Care plans. It also hears disability discrimination claims against schools and against LAs in education.

The Tribunal forms part of the First-tier Tribunal of the Education and Social Care Chamber and is overseen by Her Majesty's Courts and Tribunal Service.

The process has been created so that it is easy to understand and because of this parents or young people should not have to seek legal representation to appeal.

Under what circumstances can I appeal?

You can appeal if -

- The Local Authority refuses to provide an EHC needs assessment of the child or young person's special educational needs, following a request by the parents or school.
- There is a refusal to provide an EHC plan after concluding an EHC needs assessment.
- When there has been a refusal to arrange a reassessment of special educational needs following a request by the parent or school if the Local Authority has not made an assessment for at least six months.
- There is a decision to stop maintaining the child's EHC plan.

- A decision is taken not to replace or amend the EHC plan following a review.
- When there is an EHC plan or if a previous EHC plan has been amended or replaced and you disagree with any of the following.

1) The part which describes the child's special educational needs.

2) The part which sets out the special educational help that the local authority thinks the child should receive.

3) The school or type of school named in the EHC plan.

4) The local authority fails to name a school in the EHC plan

When should an appeal be registered?

An appeal should be registered with the Special Educational Needs and Disability Tribunal two months from the date of the local authority's decision letter giving its final written decision.

Mediation and delays

The SEN reforms brought in by the Children and Families Act 2014 requires compulsory consideration of mediation.

Mediation is when an independent third party aims to resolve a dispute between two parties who disagree.

This new requirement of compulsory consideration of mediation applies in most cases where a parent or young person wishes to appeal to the SEND Tribunal against certain decisions made by the Local Authority.

The decision could be about the contents of the education section of an EHC plan.

Although mediation can be used to resolve differences over the social care and health sections of a plan decisions concerning these areas cannot be the subject of an appeal to the Tribunal.

If a parent or young person decides they do not want mediation they will still need to obtain a mediation certificate.

What is a mediation certificate?

- This is a certificate from a mediation advisor that confirms that the parent or young person has been informed about mediation and has decided to pursue mediation.
- If mediation is chosen but is not successful then a certificate will be needed to show that mediation has taken place.
- Before making an appeal it is necessary to engage with a mediation adviser who will be able to provide information about mediation.
- After you have received information from the mediation adviser you can do one of two things -

a) You can choose mediation and let the adviser know that is what you would like to do.

b) You can tell the mediation adviser that you do not want to take up the option of mediation.

Time frame

A request for mediation must be made within two months of the date of the decision notice by the local authority.

If you choose not to go forward to mediation then the adviser must provide you with a mediation certificate within three working days of your notification.

If you do want to take up mediation then the Local Authority must make arrangements for mediation to take place within 30 days. The LA is required to take part in the mediation process.

A certificate must be issued confirming the position within three working days when the LA fails to arrange mediation within 30 days.

If for any reason you have not been given a mediation certificate at the end of the two-month deadline for making the appeal you can apply to the Tribunal for leave to appeal without a mediation certificate. You must explain the reasons why you do not have a certificate as the tribunal will only grant leave to appeal when the circumstances are exceptional.

You do not need a mediation certificate where the appeal is against the school or institution named in the plan, the type of school or institution named in the plan or the fact that there is no school or institution named. You do not need to seek mediation advice if the appeal is only about the health and social care elements of an EHC plan.

When no agreement is reached after mediation you can still take your appeal to a tribunal hearing and the panel will not know about any discussions during mediation.

For further information contact: HM Courts & Tribunal Service, Special Educational Needs & Disability Tribunal, 1st Floor, Darlington Magistrates' Court, Parkgate, Darlington DL1 1RU. Telephone 01325 289350 or email sendistqueries@hmcts.gsi.gov.uk. Website www.justice.gov.uk/tribunals/send