

Appealing against an LA decision for a child with SEND

Working with your child's school and the Local Authority (LA) to achieve an Educational Health Care Plan (EHCP) or appropriate provision and school placement in the EHCP should always be aimed for. However, there are times when agreement is not reached, particularly if a request places more demands (financial and commitment) on the LA. LAs have a duty to use public funds wisely and are only required to provide an 'adequate' education for each child or young person.

You can bring an appeal to the SENDIST Tribunal if an LA:

- refuses to carry out an EHC needs assessment or a re-assessment
- refuses to issue an EHCP
- issues or amends an EHCP but you disagree with any or all of Section B (needs), Section F (provision) or Section I (placement)
- decides not to amend an EHCP after an annual review
- decides to cease to maintain the EHCP before the age of 25.

Note that, from April 2018, you also have the right to appeal against the health and social care sections of the plan (Sections C, D, G and H).

Ahead of appealing you need to provide a mediation certificate. There are specific timings and rules around the process. If you and the LA cannot agree, then your appeal will end up going to a SENDIST tribunal process. The following link provides 6 videos on YouTube that talk you through the whole process:

https://www.youtube.com/playlist?list=PLORVvk_w75PxU3wF72j3jLYqGqISyMhZ4.

For full details on the tribunal process, follow this link: <https://www.ipsea.org.uk/what-you-need-to-know/send-tribunal>

In recent times, approximately 90% of SENDIST tribunals have been won by the appellant (normally parents) with only 10% being won by the LA.

SENDIST tribunals follow a legal process with specific regulations and timelines. The bottom line is that you, the appellant, must prove to the legal panel that the educational provision the LA is offering is inadequate and that the alternative requested by you is needed to provide an adequate education for your child. Preference without concrete evidence is unlikely to be sufficient. Key areas that your case may focus on could include:

- Type of school, eg autism, behaviour, learning difficulty level
- Academic, therapeutic and specialist provision
- Physical, speech and language, medical, behaviour and emotional needs
- Safeguarding and discrimination
- Peer group, pathway to adulthood, independence, pupil voice, birth-right
- Extended day or waking day needs

If the total cost of the provision you are seeking is more expensive than the LA is proposing, it is likely that the LA will argue that your request is not good use of public funds. It is the combination of 'adequate provision' and 'good use of public funds' that are likely to be the centre of any tribunal decision.

Professional involvement and charges

There is no charge for appealing and going to tribunal. You can represent yourself at the tribunal. However, you need to be sure that you fully understand the process and the legal grounds on which you aim to win the appeal. You will need to provide the relevant information to support your case with fact rather than emotion. It can be a stressful process. The LA may provide an experienced barrister and expert witnesses to present their case as the sums of money involved for a placement over several years can be significant.

Having professional representation increases the likelihood of success, but there are many people who have successfully represented the case themselves. A knowledgeable barrister or advocate should understand the points of law, advise you, and co-ordinate the appeal in a professional manner.

It is strongly advisable to include independent expert witness reports to support your case with professional evidence: without experts you will be relying on your personal view rather than professional opinion. The expert reports required will depend on your case but may include educational psychologist, therapists (speech and language, occupational and physiotherapy), medical, behavioural, mental health and any other reports of relevance. It is beneficial if these reports are written by experts with experience of the tribunal process. You should aim for the provision in section F of the final EHCP to be specific and measurable.

Involving professionals can be an expensive process and there is no guarantee of success. It is highly recommended you research the experience and success of any professionals you involve and that you are aware of the potential costs. Follow this link to find out if you are eligible for Legal Aid: <https://www.gov.uk/civil-legal-advice>. You should be aware that in special needs tribunals, costs will not be awarded to you (or the LA) following an appeal.

More Information

The **tribunal office** cannot give you legal advice but can advise you on the process. Contact them by email at send@justice.gov.uk or by phone at 01325 289 350.

If you don't qualify for legal aid but want support, contact **SOS!SEN** who may be able to help: <https://www.sossen.org.uk/> They also have guides and workshops to help you through the process.

IPSEA provide advice and support through their helpline and range of guides and templates. Additionally they have 200 trained volunteers who may be able to provide casework support: <https://www.ipsea.org.uk/>

The legal rules around the EHCP and appeal process are set out in **Part 3 of the Children and Families Act 2014**:

http://www.legislation.gov.uk/ukpga/2014/6/pdfs/ukpga_20140006_en.pdf

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