

Tribunal Training for Parent/Carers

Tribunal Training for Parent/Carers

Part one

- What is tribunal?
- Should I appeal?
- When can I appeal?
- Who can make the appeal?
- What is Mediation?
- When to submit an appeal?
- Short film about tribunal

Part two

- How do I register an appeal
- The appeal form
- Reasons for appeal
- Dos and don'ts
- Correspondence with SENDIST
- Before the hearing
- The hearing
- The decision

Tribunal

SENDIST

First-Tier Tribunal

What is the SEND Tribunal?

- [The First-tier Tribunal](#) (Special Educational Needs and Disability) is an independent national tribunal which hears parents' and young people's appeals against LA decisions about the special educational needs of children and young people.
- It can also hear claims of [disability discrimination](#) against schools, colleges and Local Authorities
- The SEND Tribunal is governed by the law, and has to follow the interpretation of that law by higher courts in judgments about previous SEN disputes. The SEND Tribunal must have regard to the [SEN and Disability Code of Practice](#) (the “**Code**”) which advises schools and LAs on identifying and making provision for children with SEN. The SEND Tribunal is not bound to follow the Code to the letter but it generally accepts the Code's guidance in coming to its decisions.
- The SEND Tribunal looks at the evidence put before it and **decides whether the LA decision followed the law and the Code**. It will make a decision based on what is right for the child or young person at the date of the hearing.

Should I appeal?



“I don’t agree with the local authority’s decision about my child’s special educational needs”

When should I appeal?

- If the LA refuses to carry out an [EHC needs assessment](#) or [a re-assessment](#);
- If the LA refuses to issue an [EHC Plan](#);
- If the LA issues or amends an EHC Plan but you disagree with any or all of Section B (special educational needs), Section F (special educational provision) or Section I (placement);
- [If the LA decides not to amend an EHC Plan after an annual review](#);
- If the LA decides to [cease to maintain](#) the EHC Plan at any point.

How to submit an appeal

You should have been sent a letter from the local authority when they took the relevant decision or issued you with the final EHC plan. This letter should contain the following information on your rights of appeal:

- ✓ your right to appeal that decision;
- ✓ the time limits for doing so;
- ✓ information about mediation;
- ✓ the availability of—
 - disagreement resolution services; and
 - information and advice about matters relating to the special educational needs of children and young people.

The SEND Tribunal may well extend the deadline if all this information was not provided and the deadline has passed.

Who can make an appeal?

- To be able to appeal, you must be a parent or a young person over the age of 16.
- If the decision concerns a child under the age of 16, it is the parent who has the right of appeal.
- If the decision concerns a young person over 16, then it is the young person who has the right of appeal. (See the section on [young people and their rights](#) for more information.)
- It is **free** - there are no fees for parents or young people to pay.

Mediation

In most cases you will need a mediation certificate before you can appeal. You can get this in two ways:

- ▶ Undertake mediation, and if it does not settle all of the points in dispute, you will be issued with a certificate confirming you took part in mediation; or
- ▶ Speak to a mediation advisor, and you will be issued with a certificate confirming you have been told about your right to mediate but you do not want to do so.

If you are appealing **only** about the school or college placement, or where no school or college is named you would **not** need to attend mediation or acquire a mediation certificate.

The deadline for requesting mediation is two months from the date of the decision letter, or one month from the date a mediation certificate is issued, whichever is the later.

Mediation Outcomes

If through mediation the LA and you agree to settle the case, you must ensure that you get their agreement in writing, setting out clearly what they have agreed to do. Regulations 42 and 44 of the Special Educational Needs and Disability Regulations 2014 set out certain timescales that an LA must stick to after a mediation, if they have agreed:

- To carry out an EHC needs assessment: the LA must notify the parent or young person that it is starting within 2 weeks, then either let the parent or young person know they have decided not to issue an EHC plan within 10 weeks, or send a finalised EHC plan within 14 weeks
- To issue an EHC plan: the LA must issue the draft plan within 5 weeks and the finalised EHC plan within 11 weeks
- To change the name of a school in an EHC plan: the LA must issue the amended EHC Plan within 2 weeks
- To amend an EHC plan: the LA must issue the amended EHC Plan within 5 weeks
- If the LA agree to take certain steps in a mediation agreement but then fail to do so, they are acting unlawfully. This could be challenged via [judicial review](#).

When to submit an appeal

What is the deadline for registering an appeal?

- The first thing to make a note of is the **deadline for making an appeal**. When the LA made a decision (for example, to cease to maintain an EHC Plan or a refusal to carry out an EHC needs assessment) or issued a final Plan, they **must** also have notified you of your right of appeal.
- The date of this notification is the date from which the time frame for making an appeal starts to run: you must send an appeal form to the SEND Tribunal within **two months** of the date of the decision you are appealing or the final EHC plan, or **one month** from the date you obtain a mediation certificate, whichever is the later.
- Mark any deadlines on your calendar and in your diary. (If the two months/one month ends in August, then you have until the first working day in September to get the form to the SEND Tribunal.)

The decision letter

You should have received a letter from the local authority (“LA”) when they took the relevant decision or issued you with the final EHC plan. This letter should contain the following information on your rights of appeal:

- ✓ your right to appeal that decision;
- ✓ the time limits for doing so;
- ✓ information about mediation;
- ✓ the availability of—
 - disagreement resolution services; and
 - information and advice about matters relating to the special educational needs of children and young people.

The SEND Tribunal may well extend the deadline if all this information was not provided and the deadline has passed.

Can I get help to appeal?

- The Tribunal Service has set itself to be parent and Young People friendly so it is not necessary to have representation and many parents and young people are happy to undertake this without additional expense and support.
- If you qualify for legal aid you can get help to prepare your case, although not representation on the day of the hearing
- Some people choose to pay for an advocate or specialist lawyer to help.
- In some cases Camden SENDIASS officers can support you with your queries about Tribunal, however we are not able to represent you in court like a solicitor can. If you qualify for legal aid we can answer your questions and provide support until your case is allocated to a solicitor.

How do you register an appeal?

You will need to fill out specific official forms depending on what you are appealing.

- SEND35 is for all EHCP appeals apart from....
- SEND35a refusal to assess
- SEND28/28a forms for children in youth custody and send in all supporting evidence to the SEND Tribunal. Remember to keep copies of all of your paperwork (letters, reports etc.), so you have a clear record of everything you've sent.
- You can submit your appeal either by email or by post. If you send it by post, we recommend that you send it by recorded delivery. SENDIST prefers everything by email if possible.

The appeal form

You can obtain the form from the SEND Tribunal's website, [here](#).

In the boxes on the appeal form, fill in:

- ▶ Your child's name and date of birth, or yours if you are a young person;
- ▶ Your name and address;
- ▶ Details of anyone else who has parental responsibility, if possible;
- ▶ The name of your LA and the date of the decision you're appealing against or the date of the final EHC plan;
- ▶ Any special requirements to make the process accessible to you: say here if, for instance, you need documents translated, wheelchair access, a reader or a signer, or cannot manage negotiations over the phone.

Reasons for your appeal

In the appropriate section of the form, you will need to explain which decision you're appealing against or which parts of the EHC plan you disagree with. This is called your reasons for appeal.

- ▶ It is often easier to put these on a separate sheet and write 'See separate sheet headed Reasons for Appeal' in the box on the form.
- ▶ This is where you set out why you think the LA's decision is wrong, or why the contents of the EHC plan need to change. Try to put in everything you need to say, your full case, at this point.
- ▶ As much as possible, you should try to get together any supporting evidence to submit with your appeal form. In your reasons for appeal, you should refer to this evidence to support your arguments (for example, if you are saying that your child has not made progress despite the support they currently receive, refer to school reports and/or annual review records which show this). Don't worry if you don't have everything ready to send straight away; you can submit more evidence after you've registered your appeal.
- ▶ You must send in enough information for the LA to be able to respond.

Do's and Don'ts

DO

- ▶ Keep it short and to the point.
- ▶ Separate your points into paragraphs.
- ▶ Number your paragraphs or organise them under headings.
- ▶ Refer to any evidence that backs up your points. (You can send more evidence later and you should say if you know there is evidence you don't yet have but intend to send later.)
- ▶ Refer to the legal issues that you know of.

DON'T

- ▶ Get bogged down on history. If there is a long history of difficulties between you and the LA let the evidence (e.g. letters between you and the LA) speak for itself.

What should I send with the form?

- ▶ With the completed and signed form send the SEND Tribunal the following:
- ▶ A copy of the letter the LA sent you that told you of its decision
- ▶ Your mediation certificate
- ▶ The evidence supporting your arguments
- ▶ A list of all the documents enclosed with the application (it will be helpful to the SEND Tribunal if you put your evidence in chronological order, and then write out a list explaining what each document is).
- ▶ Don't send original documents, send photocopies or scans. Keep a copy of everything you send, including the form.

The appeal form:

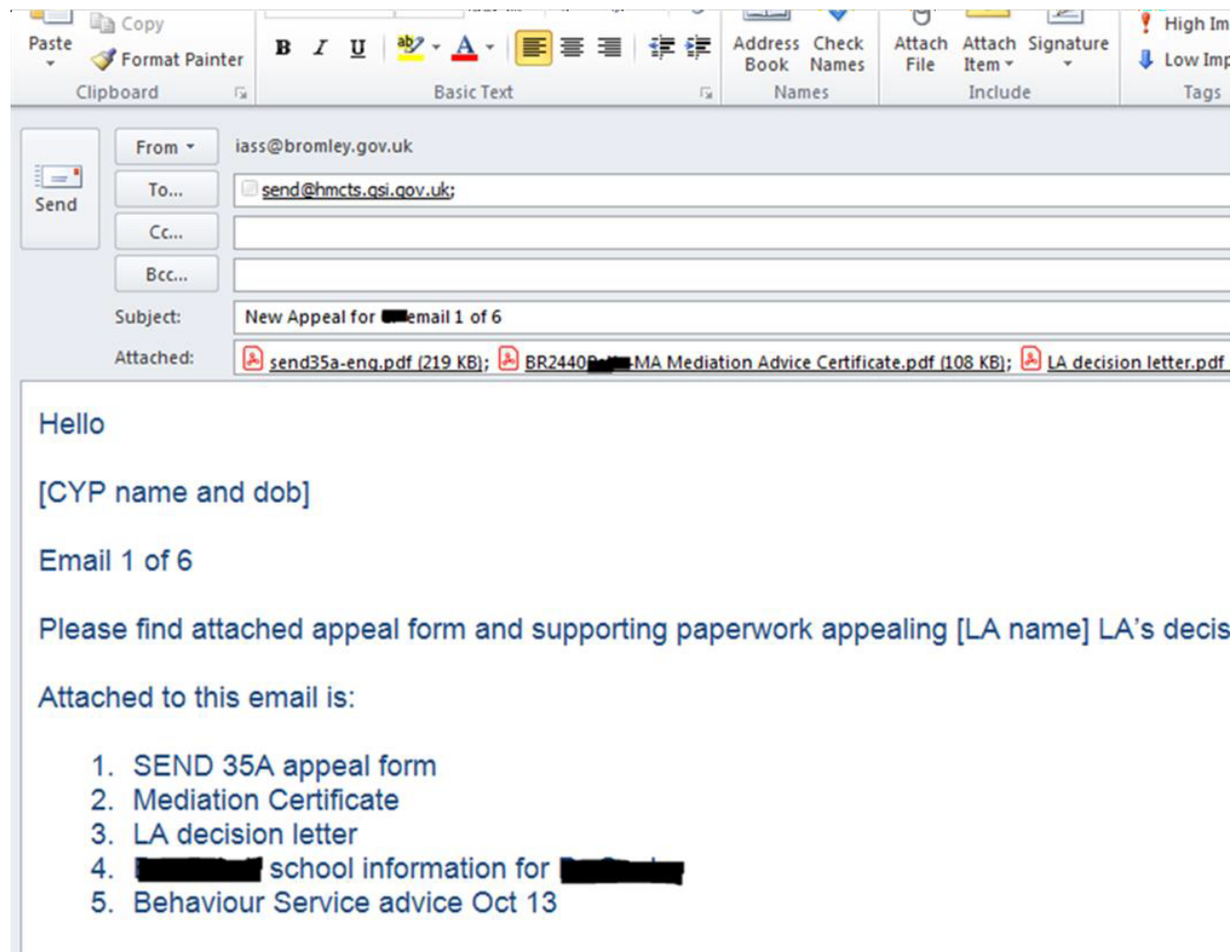
Late appeal or no Mediation certificate

SENDIST can be surprisingly amenable if there is a good reason for an out-of-time appeal. Examples we know of are:

- ▶ Parent is dyslexic and didn't know what the LA's decision letter meant, only understanding the implications when she showed it to school (who made the request!)
- ▶ LA decision following Mediation was after the stated deadlines.
- ▶ Letter from the LA was unclear about whether assessment was going ahead or not.
- ▶ Letter from LA did not set out right to appeal.

Emailing SENDIST

An example for a new appeal:



From: iass@bromley.gov.uk

To: send@hmcts.qsi.gov.uk;

Cc:

Bcc:

Subject: New Appeal for [redacted] email 1 of 6

Attached: send35a-eng.pdf (219 KB); BR2440P [redacted] MA Mediation Advice Certificate.pdf (108 KB); LA decision letter.pdf

Hello

[CYP name and dob]

Email 1 of 6

Please find attached appeal form and supporting paperwork appealing [LA name] LA's decision.

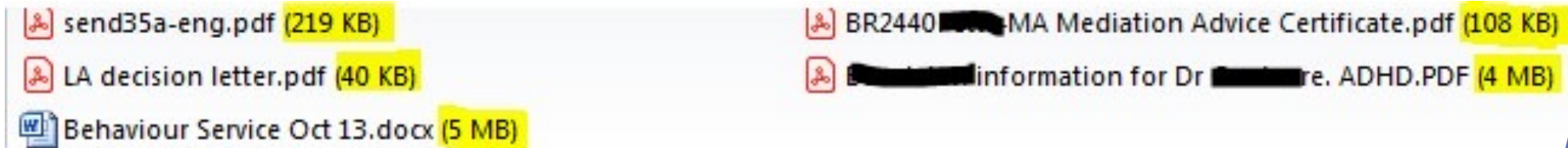
Attached to this email is:

1. SEND 35A appeal form
2. Mediation Certificate
3. LA decision letter
4. [redacted] school information for [redacted]
5. Behaviour Service advice Oct 13

Emailing SENDIST

Example continued:

This was 1 of 6 emails as you cannot send attachments of more than 10MB on one email. This email alone had attachments of 9.367 MB:



This is time-consuming and fiddly but has to be done.

The list of documents you send should match the checklist in section 8 and list of documents in section 11.

When the appeal is registered

The appeal will be registered within 10 working days of receipt. SEND Tribunal will tell you that the appeal has been registered and the date of the final hearing of the appeal. The appeal number should be used whenever you contact SEND Tribunal about your appeal.

When the appeal is registered, case directions, an attendance form and a case management questionnaire are issued. The directions will set dates by which you must take action and send the local authority and SEND Tribunal information which will be considered at the hearing. It will also set a date by which you need to tell the local authority and SEND Tribunal about the witnesses (if any) that you will bring and anyone else you want to come to the hearing.

The LA will also be sent the appeal paperwork at the same time and this may be the first they know of the appeal.

The LA response

The LA will have 30 working days after receiving the appeal application to respond (the actual date will be in the registration letter). At this stage they will:

- ▶ state the reasons they oppose the appeal, or
- ▶ inform all parties that they do not oppose the appeal.
- ▶ If they do not oppose a refusal to assess appeal, the appeal will automatically finish and the LA must write to the YP / parent within 4 weeks to say that it will carry out an assessment.

Additional evidence

Ask yourself if you want anything else sent to the tribunal, you can get help to identify and obtain information you feel would assist the case.

Look critically at the evidence sent with the appeal Are there any gaps?
For example:

- ▶ An EP mentions a dyslexia assessment – but this is not in the appeal paperwork.
- ▶ School have not sent a provision map even though the child gets SEN support.

You can send additional evidence easily at any point from the date the appeal is registered up until the deadline set by SENDIST listed in the registration letter and in the “Key Dates” table.

Evidence after the deadline

If evidence needs to be sent after the deadline you will have to request permission to do this and follow these steps:

1. Send the evidence to the LA and ask for their response.
2. Once you have their response, whatever it is, *or* if you don't have it and they have taken too long to answer...

Email a Request for Change form (SEND7 available here:

<https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>) attaching the LA's response, or lack of, and the evidence to SENDIST.

3. You will receive a tribunal order (at some point) accepting this

Appeal ending before the hearing

- If either the LA or you decide to end the appeal *after* the LA response has been sent, and *before* the hearing date/s, SENDIST needs to be formally informed.
- This happens either by the parent formally withdrawing their appeal using the SEND8 form
- Or by a Consent Order signed by both parties.

Before the hearing

- ▶ You should get a paper copy of the Bundle at least 10 working days before the hearing date.
- ▶ Check it carefully to make sure it contains all the evidence that has been sent.
- ▶ Make a note of all the particular bits of information you want the judge to take into account – the page number and where on the page, e.g. second paragraph.
- ▶ Sketch out an opening statement and/or a summary.

You will get an email with notice of hearing (NOH) instructions.

At present, all hearings happen remotely.

- ▶ Think about how you will access the hearing.
- ▶ How will you be able to involve your child/young person if appropriate and communicate with them during the hearing?

The hearing Do's

Do's

- ▶ Be polite and expect formality. Unless told differently, the judge is called “Madam” or “Sir”.
- ▶ Be confident to quote the law. A good way to do this is “my understanding is...” or “I believe that....may be relevant?”
- ▶ Give the judge time to write her/his notes. Speak slowly and understand if they ask you to stop speaking (so they can catch up).
- ▶ Be confident to counter anything you feel is said in error, but give your reasons.
- ▶ Refer to the evidence whenever you can.

The hearing Don'ts

Don't:

- ▶ **Grandstand.**
This is not a forum to air grievances with the LA or school/college
- ▶ **Interrupt.**
Even if the LA does this, don't copy them.
- ▶ **Worry.**
Good reasons and good manners can get you a lot of wiggle room if things don't go as planned!
- ▶ Refer to evidence not in the bundle or not accepted as last minute evidence.

Getting the decision



You should get an email with the decision within 10 working days of the hearing.



If you have not got one within this time, email SENDIST and chase it.



If the decision is in your favour, then the LA must start the assessment process within four weeks of the decision date.

Who can make an appeal?

- ▶ The SEND Tribunal produces a free booklet, [How to Appeal](#), and other guidance forms which can all be [accessed on their website](#). The SEND Tribunal have also produced a set of videos which explain more about what appealing to the SEND Tribunal is like – [these are available on YouTube](#) or you can request a DVD from the SEND Tribunal.
- ▶ You can request copies of the booklet, any of the other forms, and the DVD via the SEND Tribunal helpline:
Call: 01325 289350
Email : send@justice.gov.uk

Or you can write to:

HMCTS - Special Educational Needs & Disability Tribunal
1st Floor
Darlington Magistrates Court
Parkgate
DL1 1RU

Contact us below

SENDIASS

Kentish Town Community Centre 17
Busby Place
London, NW5 2SP
020 7974 6264

Email:

SENDIASS@camden.govuk

Website:

www.sendiasscamden.co.uk



We're here for you