
A Practical Guide to the Special Educational Needs and Disability (SEND) Tribunal Appeals for EHCPs

Independent Advice Service

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Abstract

This guide provides an essential overview of the process for appealing decisions made by a Local Authority (LA) regarding a child or young person's **Education, Health and Care Plan (EHCP)** in England. The SEND Tribunal (formally the First-tier Tribunal, Health, Education and Social Care Chamber) is an independent body that hears and decides these appeals, ensuring legal compliance with the Children and Families Act 2014.

1 Introduction to the EHCP Appeal Process

The SEND Tribunal is an independent court that resolves disputes between parents/young people and Local Authorities (LAs) concerning an EHCP. The EHCP is the legal document outlining a child's needs and the necessary provision.

1.1 Decisions You Can Appeal

You have the right to appeal specific decisions made by the LA. The key decisions related to the EHCP lifecycle are:

1. **Refusal to Assess (S36(8) CAFA 2014):** The LA refuses the initial request to conduct an EHC needs assessment.
2. **Refusal to Issue (S36(9) CAFA 2014):** Following an assessment, the LA decides not to issue an EHCP.
3. **Contents of the EHCP:** You can challenge the contents of the final or amended plan. This is the most common appeal type and often focuses on:
 - Section B: Special Educational Needs (needs are missing or incomplete).
 - Section F: Special Educational Provision (provision is not specific, quantified, or sufficient to meet the needs in Section B).
 - Section I: Placement (disagreement with the name of the school or setting).
4. **Refusal to Amend:** After an Annual Review, the LA decides not to amend the plan.
5. **Cessation:** The LA decides that the EHCP is no longer required and ceases to maintain it.

Crucial Note on Scope: Appeals concerning Sections B, F, and I allow the Tribunal to make recommendations on the non-educational parts of the plan, specifically Sections C (Health Needs) and H (Social Care Needs), if they are linked to the child's educational needs.

2 Phase 1: Appeal Timelines and Pre-Filing Requirements

The process is governed by strict, non-negotiable legal deadlines.

2.1 1. Mandatory Mediation or Certificate

Before lodging an appeal (except for placement-only appeals), you must contact a designated mediation adviser. You must do this within **2 months** of the LA's decision letter OR within **1 month** of the final EHCP.

- **Mediation Certificate Requirement:** You must obtain a certificate from the mediation adviser whether you choose to participate in mediation or simply decide that you do not wish to mediate. This certificate is mandatory for filing the appeal.
- **Purpose:** Mediation is a voluntary process to try and resolve the dispute without going to a hearing, saving time and stress. If successful, the appeal is not lodged.

2.2 2. Lodging the Appeal

The appeal must be submitted to the Tribunal within the statutory timeframe: **2 months** of the date of the LA's original decision letter OR **1 month** from the date of the mediation certificate, whichever date is LATER.

The appeal package must include:

1. The completed Tribunal Appeal Form (SEND35).
2. A copy of the LA's decision letter being appealed.
3. The mandatory mediation certificate (if applicable).
4. A copy of the EHCP (if appealing the contents or cessation).

3 Phase 2: Case Management and Evidence

Once the appeal is registered, the Tribunal issues a formal timetable. Both you (the Appellant) and the LA must comply with these deadlines.

3.1 1. LA Response and Grounds for Opposition

The LA will submit its written response and a bundle of evidence, stating its reasons for opposing your appeal. This evidence must be copied to you.

3.2 2. The Working Document (EHCP Contents Appeals)

For appeals concerning the contents of the EHCP (Sections B, F, I), a 'Working Document' is established. This is a copy of the EHCP that is edited by both the Appellant and the LA to show:

- The LA's proposed wording (in one color, e.g., blue).
- Your proposed wording (in a different color, e.g., red).

This document clearly identifies areas of agreement and disagreement for the Judge.

3.3 3. Evidence and Witness Statements

The Tribunal relies on evidence. This usually includes educational psychology reports, medical assessments, speech and language therapy reports, and other professional assessments. Both parties must submit:

- ✓ All supporting professional reports.
- ✓ Statements from any professional or expert witnesses you plan to call to the hearing.
- ✓ The final bundle of evidence that will be used at the hearing.

4 Phase 3: The Tribunal Hearing and Decision

4.1 The Hearing

The hearing is less formal than a criminal court, but it is a legal process. It is conducted by a panel of typically three members: a legally qualified Tribunal Judge (the chair) and one or two specialist lay members with experience in SEN.

- ★ **Process:** The hearing involves the Judge guiding the discussion, where both the LA's representative and the Appellant present their arguments and cross-examine the opposing party's witnesses.
- ★ **Focus:** The panel is focused on determining whether the provision in the EHCP is sufficient to meet the child's identified special educational needs and whether the placement proposed is appropriate.

4.2 The Decision Notice

The panel makes its decision after the hearing, usually in private. The written Decision Notice is sent to all parties within **10 working days** of the hearing.

- ↑ **Outcome (Appeal Upheld):** The Tribunal agrees with your arguments and legally *orders* the LA to take specific action (e.g., amend Section F to include 15 hours of Speech and Language Therapy). The LA has strict deadlines to comply.
- ↑ **Non-Compliance:** If the LA fails to comply with a Tribunal order by the deadline, the matter can be escalated back to the Tribunal for enforcement proceedings.

Disclaimer

This document is for informational purposes only and does not constitute legal advice. You should seek independent legal advice or support from a specialist organisation (such as IPSEA, SOS SEN, or a local SENDIASS service) to guide you through your specific appeal.