



## Cumbria SEND Information, Advice and Support Service

Offering impartial information, advice and support to children and young people with special educational needs and or disabilities and their parents & carers.

### Tribunal

The First-tier (SEN and Disability) Tribunal hears appeals against decisions made by the local authorities in England in relation to children's and young people's EHC needs assessments and EHC plans.

It also hears disability discrimination claims against schools and against local authorities when the local authority is the responsible body for a school.

This factsheet aims to provide an overview regarding the Tribunal process.

#### What can be appealed to Tribunal?

Section 51 of the Children and Families Act 2014 provides that a child's parent or a young person may appeal to the Tribunal in relation to:

- a decision of a local authority not to secure an EHC needs assessment;
- a decision of a local authority, following an EHC needs assessment, not to issue an EHC plan;
- where an EHC plan is maintained for the child or young person:
  - the child's or young person's special educational needs as specified in the plan;
  - the special educational provision specified in the plan;
  - the school or other institution named in the plan, or the type of school or other institution specified in the plan;
- that no school or other institution is named in the plan;
- a decision of a local authority not to carry out a re-assessment following a request;

- a decision of a local authority not to amend an EHC plan following a review or re-assessment;
- a decision of a local authority to cease to maintain an EHC plan. .

A parent or young person **cannot** appeal the following parts of the EHC Plan to the Tribunal and other remedies should be considered (which are set out in separate factsheets), with specialist advice sought:

Section C: The child or young person's health needs

Section D: The child or young person's social care needs

Section E: The outcomes sought for the child or the young person

Section G: Health provision

Section H1 and H2: Social care provision

Section J: The amount of Personal Budget or any conditions imposed (although the Tribunal can consider appeals which relate to the special educational provision that will be delivered via a Personal Budget).

There are new duties under the Act to consider mediation before an appeal can be lodged. These requirements are set out in detail in a separate factsheet.

### **What are the time limits for appeal?**

The deadline for registering an appeal with the Tribunal is:

- two months from the date of the local authority sent the notice containing a decision which can be appealed or;
- one month from the date of a mediation certificate which has been issued following the mediation or the parent or young person being given mediation information, whichever is the later.

The Tribunal will not take account of the fact that mediation has taken place, or has not been taken up, nor will it take into account the outcome of any mediation. Parents and young people will not be disadvantaged at the Tribunal if they have chosen not to go to mediation.



Claims for disability discrimination must be made within six months of the alleged instance of discrimination.

Time limits for all claims to the Tribunal can be extended but only if the Tribunal considers it appropriate to do so. However, there must be good reason and parents and young people should always aim to lodge within the time limits.

Given these limits parents and young people should seek advice about a potential Tribunal appeal as quickly as possible.

### **Who can appeal to the Tribunal about EHC needs assessments and plans?**

The following individuals can appeal to the Tribunal:

- Children from 0 to the end of compulsory schooling - Parents
- Young people over compulsory school age until they reach age 25 – Young People where they have capacity to make the decision and their representative or parents where they lack capacity.

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

### **What decisions the Tribunal can make?**

The Tribunal has a range of powers to make certain decisions in relation to appeals. These include:

- dismissing the appeal;
- ordering the local authority to carry out an assessment,
- ordering the local authority to make and maintain an EHC plan
- ordering the local authority to amend the EHC plan.
- ordering the local authority to reconsider or correct a weakness in the plan, for example, where necessary information is missing.

Local authorities have time limits within which to comply with decisions of the Tribunal (see the Special Educational Needs Regulations 2014).

In making decisions about whether the special educational provision specified in the EHC plan is appropriate, the Tribunal should take into account the education and

training outcomes specified in Section E of the EHC plan and whether the special educational provision will enable the child or young person to make progress towards their education and training outcomes. The Tribunal can consider whether the education and training outcomes specified are sufficiently ambitious for the child or young person. When the Tribunal orders the local authority to reconsider the special educational provision in an EHC plan, the local authority should also review whether the outcomes remain appropriate.

**Suffolk IAS Services have created a series of videos to help parents fill in the SEND appeal forms 35 and 35A.**

**The videos are broken down into sections. It is possible to watch one section after another or simply go to a section of the form which you are unsure about.**

**A mediation video is also included.**

**Two playlists are included on Youtube:**

**This is the direct link to the 'Refusal to Assess' video playlist**

<https://www.youtube.com/playlist?list=PLr9IrTGJpvKeDybhA6s-SHE4ll772nXm2>

**The link below takes you to the playlist 'EHC Appeal Videos':**

<https://www.youtube.com/playlist?list=PLr9IrTGJpvKfcPJt9xPlhD9xBLFFcmTti>

**The videos refer to Suffolk on occasion, however the advice is appropriate for all areas of England.**

**Please contact your local SENDIASS Co-ordinator for further advice and support with an appeal to Tribunal.**

