

APPEALING TO THE SENDIS TRIBUNAL

The Tribunal introduced new rules in 2008, but has spent the subsequent period making major revisions, which are continuing. This is a “barebones” account of the current system.

What can you appeal against?

- A refusal to make a statutory assessment or reassessment (in the latter event, provided there has been no new assessment within the preceding 6 months)
- Following statutory assessment, a refusal to issue a statement
- A refusal to change a statement after reassessment
- The contents of a statement
- A decision to cancel a child’s statement
- A refusal to change the school named in the statement, provided the statement is at least a year old, the school requested is maintained, and the parent is asking for the same type of school as the one in the statement.
- A refusal to amend a statement after annual review.

The time limit for appealing is 2 months from the date the decision complained of was sent out.

Initial procedure

The parent fills in an appeal form, which can be found on the SENDIS Tribunal website (www.sendist.gov.uk). Appeal grounds should be as thorough as possible and accompanied by all available relevant documents and reports. However, you do not need to delay entering your appeal whilst trying to obtain independent experts’ reports, because there is provision for these to be filed at a later stage.

Once the appeal is registered, the Tribunal will send the papers to the local authority (LA) along with further information and directions, including the proposed hearing date. The LA has 30 working days to respond and must serve the response on the parents as well as the tribunal.

Case management

The Tribunal will send automatic directions covering such matters as when documents and details of witnesses have to be filed. They will order that specific information be filed by one or both of the parties, for example as to the costs of school placements. They will also send out an attendance form to be returned by a defined date, usually shortly after receipt of the local authority response, to notify them who will be coming to the hearing as witnesses, representatives or observers. However, these details can be amended later if required. The parties can also separately – at any stage in the process – make applications for specific directions, using a different form, described as a “Request for Changes” form – for example, requiring the other side to produce particular

information or documents, applying for a postponement of any deadlines, asking leave to call extra witnesses, etc. The form is available on the SENDIS Tribunal website.

In some cases, arrangements will be made for a hearing by telephone to discuss case management or a Request for Changes. Very occasionally (normally where a parent has communication or learning difficulties), there will be a “face to face” directions hearing.

It is this case management process which is the most important change in the new procedure. The Tribunal wants to avoid the sort of problem that has happened in the past when hearings have had to be adjourned because the Tribunal does not have enough information to make a decision, or because one party has served evidence so late that the other side has not had enough time to consider it. The procedure also aims to narrow down the issues between the parties so that at the hearing the panel can concentrate firmly on areas of disagreement and time can be used efficiently.

The Tribunal can order the production of relevant evidence, and has power to require that a child be made available for examination or assessment by a professional, but an application can only be made if a request has been made and refused. If the parents refuse to comply, the Tribunal is entitled to draw adverse inferences. It can also order schools to allow access to experts to assess the child or the provision to be made in the school, again only if this has been requested and refused. Failure to comply with a Tribunal direction may result in the case being struck out provided that there has been a prior warning of this; or parties may be prevented or restricted from further involvement in the appeal.

The Tribunal directions will set a deadline for the submission of any further evidence, usually the 16th week after the appeal was entered. For appeals against statements, they will also order that the parties co-operate to produce a working document - i.e., a document based on the current statement but showing by the use of different fonts any amendments which have been agreed between the parties, amendments which the parents are asking for but which the LA disagrees with, and vice versa. This should usually be lodged ten working days before the hearing.

The hearing

The Tribunal sends details of the proposed hearing date, normally 20 weeks later, when it first registers the appeal, but it is open to the parties to apply to change this if necessary. Where the Tribunal is dealing with an appeal about a school place when a child is moving to a new schooling phase (usually primary to secondary) there is an expedited timetable: in 2011 this is likely to be 14 weeks as opposed to the usual 20.

Before the hearing the Tribunal is supposed to produce a streamlined bundle in a set order, comprising all the documents which have been filed by both parties. However, to date major staffing problems at SENDIS have meant that the compiling of Tribunal paperwork is unreliable and bundles need to be checked carefully.

If the parties reach agreement, it is of course always open to them to withdraw or agree to a consent order disposing of the appeal.

Each party can normally call up to three witnesses at the hearing, but can apply for leave to call more. The appeal is heard by a panel of three, a legally qualified chairman plus

two wing members who have experience in SEN. Normally, the hearing does not take more than one day at the most, and a decision should be sent to each side within two weeks after the hearing.

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