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Sheffield Special Educational Needs & Disability Information Advice & Support

Appeal Process – Consent Orders

With acknowledgment to Surrey IAS: <https://sendadvice.surrey.org.uk/appeal-process-consent-orders/>

Settlement or withdrawal of appeals

A number of appeals won't get to the hearing date because the parties come to an agreement or the LA agrees to what the parent or young person is asking for.

Where the LA concedes before it has put in a response, it has to comply with the deadlines in SEND Reg 45 for assessing, issuing or amending an EHCP:

Unopposed appeals

(1) This regulation applies where the child's parent or young person has appealed to the First-tier Tribunal and the local authority notifies the First-tier Tribunal that it will not oppose the appeal before it submits a response.

(2) The appeal is to be treated as if it was determined in favour of the appellant and the First-tier Tribunal is not required to make an order.

(3) Where the appeal concerned a request for a local authority to make an assessment under section 36 or a review or reassessment under section 44, the local authority shall carry out that assessment, review or reassessment within 4 weeks of the local authority's notification to the First-tier Tribunal.

(4) Where the appeal concerns the contents of the EHC Plan, then the local authority shall issue the amended EHC Plan within 4 weeks of the local authority's notification to the First-tier Tribunal.

(5) Where the appeal concerns the name of the school or other institution, or type of school or other institution to be named in the EHC plan, the local authority shall issue the amended EHC plan within 2 weeks of the local authority's notification to the First-tier Tribunal.

(6) Where the appeal concerns the refusal of the local authority to make an EHC Plan, then the local authority will arrange to make an EHC Plan within 5 weeks of the local authority's notification to the First-tier Tribunal.



- (7) The local authority need not comply with the time limits specified in paragraphs (3), (4) or (6) if it is impractical to do so because—***
- (a) exceptional personal circumstances affect the child or their parent or the young person during the relevant period;***
 - (b) the child or their parent or the young person are absent from the area of the local authority for a continuous period of not less than 2 weeks during the relevant period; or***
 - (c) any of the circumstances referred to in regulation 13(3) apply.***

—The Special Educational Needs and Disability Regulations 2014

Where the LA has already put in a response, the parties should write up a document setting out what has been agreed and then both sign it. This is called a 'consent order'. The LA would draw up the consent order.

This document should be sent to the Tribunal with an explanation that the parties have agreed that the appeal is being resolved by consent. This should set out what has been agreed and the dates by which the LA is going to act. There are no deadlines which will apply automatically so parties will need to agree these. The parties could simply state that the deadlines in SEND Reg 44 apply.

Compliance with the orders of the First-tier Tribunal

44.—(1) Subject to paragraph (3) or any direction made by the First-tier Tribunal, if the First tier Tribunal makes an order requiring a local authority to take any action, the local authority shall take that action within the period specified in paragraph (2).

(2) Where the order—

(a) dismisses an appeal against a determination to cease an EHC Plan, the local authority shall cease to maintain the EHC Plan immediately;

(b) requires a local authority to make an assessment or reassessment, the local authority shall within 2 weeks of the order being made notify the child's parent or the young person that it shall make the assessment or reassessment and shall—



(i) where, following the assessment or reassessment, the local authority decides that it is not necessary for special educational provision to be made for the child or the young person, in accordance with an EHC plan, notify the child's parent or the young person of its decision, giving reasons for it as soon as practicable, and in any event within 10 weeks of the date of the First-tier Tribunal's order;

or (ii) where, following the assessment or reassessment, it decides that it is necessary for special educational provision to be made for the child or the young person, in accordance with an EHC plan, it must send the finalised plan to those specified in regulation 13

(2) as soon as practicable and in any event within 14 weeks of the date of the First-tier Tribunal's order; (c) requires a local authority to make and maintain an EHC Plan, the local authority shall—

(i) issue a draft EHC Plan within 5 weeks of the order being made; and (ii) send a copy of the finalised EHC plan to the child's parent or young person under Regulation 14, within 11 weeks of the order being made.

(d) refers the case back to the local authority for it to reconsider, the local authority shall do so within 2 weeks of the order being made and shall either send a copy of the draft EHC Plan as required under Regulation 13 or give notice as required under Regulation 5 of any decision not to maintain an EHC Plan;

(e) requires a local authority to amend the special educational provision specified in an EHC Plan, the local authority shall issue the amended EHC Plan within 5 weeks of the order being made;

(f) requires the local authority to amend the name of the school or other institution or the type of school or other institution specified in the EHC plan, the local authority shall issue the amended EHC plan within 2 weeks of the order being made;

(g) requires the local authority to continue to maintain an EHC Plan in its existing form, the local authority shall continue to maintain the EHC Plan; and (h) to continue and amend an EHC Plan, the local authority shall continue to maintain the EHC Plan and amend the EHC Plan within 5 weeks of the order



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being made.

(3) The local authority need not comply with the time limits specified in paragraph (2)(b) and (c) if it is impractical to do so because—

(a) exceptional personal circumstances affect the child or their parent, or the young person during that period of time;

(b) the child or their parent or the young person is absent from the area of the authority for a continuous period of 2 weeks or more during that period of time;

or (c) any of the circumstances referred to in regulation 13(3) apply.

-The Special Educational Needs and Disability Regulations 2014

If you come to an agreement with the LA during the course of the appeal process, you can ask permission from the Tribunal to withdraw the appeal or request that the Tribunal issue a consent order. The Consent Order will acknowledge what has been agreed between you and the LA and the Tribunal will issue a judicially binding order to this effect.

Consent Orders

Rule 29 of the HESC (Health, Education and Social Care Chamber) Rules states:

29.(1) The Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

(2) Notwithstanding any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

Thus if you wish the Tribunal to issue a consent order that will put an end to the appeal and confirm what has been agreed between you (as the parent) and the LA, you will need to ensure that the Tribunal have heard from both you and the LA as to what you have agreed. This can be done in writing or orally at a Hearing. The Tribunal do not HAVE to issue a consent order but will do so if “they consider it appropriate”.



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Withdrawing an Appeal

Rule 17 of the HESC Rules set out the procedure to withdraw an appeal:

17.(1) Subject to paragraphs (2) and (3), a party may give notice of the withdrawal of its case, or any part of it—

(a) at any time before a hearing to consider the disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or (b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal except:

(4) A party which has withdrawn its case may apply to the Tribunal for the case to be reinstated.

(5) An application under paragraph (4) must be made in writing and be received by the Tribunal

within 28 days after—

(a) the date on which the Tribunal received the notice under paragraph (1)(a); or (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).

(6) The Tribunal must notify each party in writing of a withdrawal under this rule.

Parents, if they come to an agreement with the LA, should ensure that the LA have written, dated and signed the agreement before they withdraw the appeal. If this is not in place we would recommend that you do not withdraw the appeal as it is essential that all parties know what they have agreed to before asking the Tribunal to put an end to the proceedings.

It would be advisable to have one of these documents before signing:



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- a refusal to carry out a statutory assessment: this will be a letter from the LA saying that they are carrying out a Statutory Assessment under s 323 of the Education Act 1996
- a refusal to issue an EHCP: this will be a letter confirming that the LA will issue a proposed EHCP following the statutory assessment and the date when this will be issued
- the contents of the EHCP: the final amended signed EHCP with all the agreed amendments in Section B, F and I
- ceasing to maintain the EHCP: the amended final dated EHCP setting out any amendments you have requested.

How to Withdraw the Appeal:

This must be done in writing and copied to the Tribunal and LA. The easiest way to do it is through a Request for Changes Form. You are asking for permission to withdraw the appeal and give brief reasons for doing so. You may need to say no more than you have come to an agreement with the LA as to the contents of the appeal. Remember that when the LA are agreeing it should be THEM that withdraws not you as the parent.

The Tribunal Service will then inform you in writing whether they have accepted the withdrawal of the appeal.

If the case is settled only a few days before the hearing date, then the easiest way to request a withdrawal is to email over the signed request for changes form to the Tribunal. You should mark it 'URGENT' (and include your reference number and name as you would have done throughout the appeals process). You can also telephone Tribunal to tell them that you have sent it.

The Tribunal Service will then contact a Tribunal Judge before contacting you to say whether the request to withdraw has been accepted.

In most circumstances the Tribunal will agree to a withdrawal. However in a few very complex cases they may still wish the parties to turn up and hold a Hearing. If the Tribunal do not agree to issue a consent order or allow you to withdraw the appeal, you will need to turn up to the Hearing and discuss the issues with the Tribunal Panel.