



SHEFFIELDSENDIAS

Sheffield Special Educational Needs & Disability Information Advice & Support

SEND Dispute Resolution Guide

Your guide for resolving disputes around Education,
Health and Care plans.

With thanks to

IPSEA
Collis Mediation
Redbridge IAS
Suffolk SENDIAS



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Jargon Buster

Annual review – a review of an EHC plan which takes place at least every 12 months.

Bundle – all of the evidence which is submitted by both parties is collated into the bundle

Case directions - information sent from the Tribunal after a case is registered. It will include the hearing date and a timetable for the process leading up to the hearing. This is usually sent by email to one parent.

Education, Health and Care Needs Assessment – a detailed look at the special educational needs of a child or young person and the support they may need in order to learn

Education, Health and Care Plan – a document with legal backing which outlines the educational, health and social care needs of a child or young person and the provision required to meet those needs

First Tier SEND Tribunal – an independent body where parents and young people can raise appeals against decisions made by a local authority (LA) about an Education, Health and Care plan.

Grounds of appeal – what you are appealing against.

Local Authority – the administrative body which has the authority to make decisions around SEN provision.

Mediation – a more informal way of resolving a dispute between a parent or young person and a local authority.

Mediation certificate – a document which shows you have attended a mediation meeting or have received information about mediation and have chosen not to attend mediation. You will need a mediation certificate before lodging an appeal with the SEND Tribunal, unless the appeal is about Section I (educational placement) only



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Refusal to assess – a decision made where the local authority decide not to conduct an education, health and care needs assessment

Refusal to issue - a decision made where the local authority conducts a needs assessment but then decides not to issue an EHC plan

SENDSARS- Special Educational Needs and/or Disability statutory assessment & review service

Witness – an individual who is asked to provide evidence, either written or oral, at a hearing

Working document – a copy of an EHC plan which is passed between the parent or young person and the local authority. Both parties can make amendments to the document as well as agreeing or disagreeing with amendments made by the other party.



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Your Options

Early resolution of any disagreements is best for everyone more importantly the child or Young Person.

If you are unable to agree about decisions or provision, there are a number of ways in which you and your child/ young persons voice can be heard.

A child learns best when all partners are working together. Good communication and positive relationships between parents or carers, children/ young people, schools and the LA are vital.

Involving children with SEND and their parents in decision making is a key objective of the SEN Code of Practice.

If you don't agree with the LA, it is important to keep the channels of communication open.

Sometimes such problems can be resolved by discussion and informal forms of dispute resolution. However, sometimes this doesn't resolve the disagreements and parents of children with SEND and young people may need to take further action.

When you receive any decision from the LA if this is an appealable decision you will receive a letter explaining your rights. On this letter, there will be contact details of SSENDIAS and inform you of your options of mediation and lodging an appeal with the SEND tribunal.

There are a number of options open to you and we will explain all of these in this document.



Firstly, open communication with the LA. Ring SENDSARS, the number of your inclusion officer will be on the letter you have received. You can ask for a meeting to discuss their decision. This can be done through a parent meeting.

You can attend mediation, which is a less formal way of resolving a dispute between you and the LA, or you can appeal straight to the SEND Tribunal. If you attend mediation and you are not happy with the outcome, you still have the right to appeal to the SEND Tribunal.

What can be appealed?

When you are going through the EHC process, there are several decision points. Each of those decisions can be appealed.

You can appeal if:

- The LA has refused to conduct an education, health and care needs assessment.
- The LA has conducted a needs assessment but then decided not to issue an EHC plan.
- You receive the final plan, and you are not happy with the content in Section B and/or Section F, and/or you are not happy with the educational placement in Section I.
- The LA are proposing to cease your child or Young Persons EHC Plan

Additional to the above, you can ask the Tribunal to make **recommendations** on health and social care provision. However, these are not legally binding orders in the same way as with education.

SENDSARS Contact Details

Tel: 0114 273 6394

Email:

SENDAssess&Review@sheffield.gov.uk

EHC Plan at a glance

Section B – educational needs

Section F – special educational provision

Section I – educational placement



Appealing decisions after an annual review

Where your child has an education, health and care plan and it is reviewed, there are 3 outcomes. Each of these can be appealed

- LA decide not to amend the EHC plan but parents wish for it to be amended
- LA decides to amend the EHC plan but parents disagree with the amendments
- LA decides to cease to maintain the EHC plan but parents wish for it to remain in place

What is mediation?

Mediation is an informal, voluntary process which involves an independent facilitator (the mediator).

Mediation works best when parties to the dispute come to the meeting with a real desire to resolve the disagreement and a willingness to negotiate.

Using mediation does not affect the parent /carer's or young person's right of appeal to the SEND Tribunal.

The mediator:

- helps those in dispute to reach agreements that are acceptable to all parties.
- is impartial and does not take sides.
- facilitates discussions and ensures that everyone is treated fairly.
- is in control of the process but not of the outcome of the mediation. It is the parties that find solutions and decide the outcome.

Sheffield currently commissions their mediation to take place through Collis Mediation Ltd. They have a video to watch on their website for parents or young people if you are considering mediation.

[Mediation video link](#)



What is the SEND Tribunal?

The SEND Tribunal is an independent body which specifically hears appeals from parents or young people against decisions made by a LA regarding the special educational needs of children and young people and the provision they require.

Good to know...

There are no fees associated with appealing to the SEND Tribunal

The SEND Tribunal is bound by the law. It makes decisions based on whether or not the LA has complied with the law when making the decision(s) you are appealing against.

The SEND Tribunal has produced a free booklet called *How to Appeal*. This and other guidance can be found on their website [Special Educational Needs and Disability Tribunal forms - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/282222/Special_Educational_Needs_and_Disability_Tribunal_forms_-_GOV.UK.pdf)

The SEND Tribunal has also produced a series of videos which may be useful to parents who are thinking about, or are in the process of, appealing to the SEND Tribunal [Special Educational Needs and Disability Tribunal - YouTube](https://www.youtube.com/watch?v=Kj8j8j8j8j)

The deadline to appeal is 2 months from the date of the decision letter, or one month from the date of the mediation certificate, whichever is later.



How to Request Mediation

If you are considering or wish to request mediation, then you can contact Collis Mediation Ltd by
Phone: 07715 958 290
Email info@collismediationltd.com
Online [Mediation and Appeal Request \(collismediationltd.com\)](http://www.collismediationltd.com)

The mediation advisor will talk you through the process and help you decide whether to take up the mediation or not.

If you do not want to go to mediation, simply tell the mediation adviser that and they will send to you a mediation certificate. You will need this certificate to send with your appeal paperwork, so keep hold of it.

If you do want mediation, tell the advisor and your LA this and tell them what you want to discuss in the mediation. The mediation advisor will then arrange a date and time for this to take place.

What happens at mediation?

Everything that is discussed at a mediation meeting is confidential. If you were to take the case to the SEND Tribunal, neither you nor the LA would be able to disclose what was said at mediation.

The LA must send a representative who has the authority to make decisions.

The mediator is legally required to have enough knowledge of the legislation to be able to conduct the mediation session.

Who can attend mediation?

Parents and young people are allowed to take someone with them to support them. This could be a friend or relative, a SENDIAS caseworker or even a solicitor.

It may also be useful to have other relevant people attend, such as a representative from the school or college.



After the mediation session, you will receive a mediation certificate, unless you are only discussing section I (placement). This will happen whether or not an agreement is reached.

Outcomes for mediation

There are two broad outcomes from mediation: an agreement is reached, or an agreement is not reached.

Agreement reached

If both parties reach an agreement during the mediation session, this should be written down in a mediation agreement. This is like a contract between both parties and therefore is binding.

It depends on the issues discussed at mediation as to what may be agreed.

LA agrees to carry out a needs assessment	<p>The LA must inform you the needs assessment is starting within 2 weeks.</p> <p>The LA must let you know if they are issuing a plan within 10 weeks.</p> <p>The LA must issue the final plan within 14 weeks.</p>
LA agreed to issue an EHC plan	The LA must issue a draft EHC plan within 5 weeks and the final EHC plan within 11 weeks
LA agrees to change the name of a school in an EHC plan	The LA must issue amended EHC plan within 2 weeks
LA with amend the EHC plan (section B and/or F)	The LA must issue amended plan within 5 weeks
LA agree to do something else	The LA must do it within 2 weeks



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Even if other actions have been agreed in mediation, but the original decision is upheld your rights of appeal remain intact.

The deadline to appeal is 2 months from the date of the decision letter, or one month from the date of the mediation certificate, whichever is later.

Agreement is not reached

You can use your mediation certificate to lodge an appeal with the SEND Tribunal.

For more information on Mediation, please have a look at the links below.

[Mediation Factsheet](#)

[Home \(collismediationltd.com\)](http://collismediationltd.com)

[Mediation \(ipsea.org.uk\)](http://ipsea.org.uk)

[A Guide to SEND Mediation](#)



Lodging an Appeal

To lodge a formal appeal, you will need to get a mediation certificate, unless you are only appealing Section I You do not have to attend mediation; you just need to show that you have received information about mediation and considered it as an option. However, you can attend mediation if you wish.

To lodge an appeal, you will need to complete an appeal form and send this to the SEND Tribunal.

The type of form you complete depends on the type of appeal you are lodging.

Note: if you are **only** appealing section I of the plan, you do not need to have a mediation certificate before lodging the appeal. This is because section I cannot be changed in mediation.

Refusal to assess – SEND35a SEND35A - Application for appeal - Refusal to secure an EHC Needs Assessment (publishing.service.gov.uk)	Any other appeal - SEND35 form. SEND35 - Application for appeal - Child or young person (publishing.service.gov.uk)
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Remember!

You need to save the appeals form **before** you complete it

Use a SEND 35 form for:

- Appeals against refusal to issue an EHC plan
- Appeals against section B, F or I of final plan
- Appeals against refusal to amend following annual review
- Appeals against cease to maintain following annual review

If you are unsure about completing your SEND35 form, we have a webinar on our website which explains how to do this [Completing your SEND35 form Webinar — Sheffield SENDIAS](#)



You will be asked on the form if you would like a paper hearing. These only take place for Refusal to assess and Refusal to issue a plan. These are not advised for Appeals against section B, F or I of final plan as these will take place via video link (oral hearing).

What happens next?

Send your appeals form to the SEND Tribunal. You are advised to do this via email to send@justice.gov.uk

You will receive an acknowledgement of receipt of this. Please ensure you receive this because it is proof of the date it was lodged.

Tribunal will consider your appeal within 22 working days. This can take longer if the Tribunal is receiving a high number of appeals. The appeal documents will be checked and you will be notified if the tribunal can register your appeal.

If your appeal is registered, you will receive case directions. These set out the dates by which both parties must take action. (If you have asked SSENDIAS to help you we DO NOT receive a copy of the case directions, so please forward them to us when you receive them.)

The LA is also sent notice that the appeal has been registered and the Tribunal will send them the same case directions. They will have the same timetable as you.

The first action is for the LA to provide their response to your appeal. The LA must respond within 30 working days of receiving the notice that the appeal has been registered. Their response will get sent to you and the SEND Tribunal.

The response must say whether the LA is contesting the appeal or conceding it, and the reasons why.

The second action is final evidence, this includes any information from any professional which has not previously been submitted to the LA. You will find more information about submitting evidence on page 12, Preparing for the hearing.



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The Case Review Form is the form you need to complete to tell the Tribunal who will be attending and set out the position of the case.



Preparing for the hearing

Evidence

It is never too early to start preparing your evidence for your Tribunal hearing. This will need to be sent to the Tribunal and the LA by the deadline outlined in your case directions.

You need to think about what evidence is relevant to your appeal. This could include reports from professionals.

There are limits to how many pages of evidence you can submit. You will therefore need to consider carefully what evidence you are submitting and how relevant it is to your case.

When submitting evidence you **must** send it to the LA representative as well as the SEND Tribunal.

Examples of evidence:

- New or updated professionals reports
- School provision map
- School progress reports
- Annual review documents
- Alternative provider reports
- Attendance data

Please note this is not an exhaustive list.



Witnesses

Witnesses are there to provide expert evidence for your appeal. You are generally allowed up to 3 witnesses, but you can ask the Tribunal to grant you more if needed. There is no guarantee that they will agree.

Witnesses can give written or oral evidence.

If you request that a witness attend the hearing, but they refuse, you can make an application for a witness summons, providing there is no other way for them to give evidence other than attending the hearing. You can do this through a request for changes form, also known as a SEND7 form.

Witnesses you may want to call could include:

- SENCO at current school
- Educational psychologist, or another professional who is author of key report/piece of evidence.
- Representative from the school you are appealing for (if appealing section I)

You can also use a request for changes form to:

- Request an extension of time to respond to a direction, such as the deadline to submit evidence.
- Request a change to the final hearing date.
- Request a witness summons.
- Amend or extend the grounds of appeal.
- Request permission to add additional witnesses.
- Request that an observer attend the hearing.

Working document

The working document is a Word version of the final EHC plan which gets passed back and forth between the parent and the LA. Both parties can make amendments and can say whether they agree or disagree with amendments the other party has proposed. The final document must be submitted to the Tribunal 10 days before the hearing. The LA will contact you with a first copy of the working document.



This is only used in appeals about the content of an EHC plan i.e., a section B and/or Section F appeal.

You can also use the working document to look at health and social care needs and provisions. However, the SEND Tribunal can only make recommendations on this and they are not legally binding.

The reason for the working document is to try and narrow down the key issues which will need to be discussed at the hearing.

The following notation will be used to keep track of amendments.

Normal type	Original EHC plan
Underlined type	Amendments agreed by both parties
Bold type	Parent’s proposed amendments
Bold strike through	Parent’s proposed deletions
<i>Italic type</i>	LA’s proposed amendments
<i>Italic strikethrough</i>	LA’s proposed deletions

The working document is required to be completed and sent to the Tribunal 10 working days before the hearing.

You should use the evidence collected to make amendments to the working document and reference them in Section K of the EHC plan.

The Bundle

The bundle contains all the evidence which has been submitted by the parents or young person and the LA. The bundle will be sent to all parties at least 10 days before the hearing.

It is important you check through the bundle to make sure all the evidence you submitted has been included. If you think any evidence is missing, it is important you let the Tribunal know as soon as possible.



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You should spend some time reading through this and thinking about any questions you may want to ask the LA at the hearing.

Make sure you have the bundle with you on the day of the hearing as other people at the hearing will probably refer to it.



The hearing

Most hearings take place online. They happen in the same way as they would if they were held at a court. Just because they are online does not mean that it is any less formal or important.

The length of the hearing will differ depending on the issues being discussed.

Hearings are held in private. This means there will be no members of the public or journalists present. Only those who are involved in the case will attend.

The panel is made up of a Tribunal judge and up to two specialist members.

You can prepare a summary statement for the hearing day, to be read as the last thing the judge hears on the day. The judge may also ask to hear what a typical day is like for your child or a little bit about your child, at the beginning of the hearing.

The child can attend the hearing, particularly if they want to put their views across to the panel. However, they do not need to, and it will not affect the outcome of the hearing if the child does not attend.

You should let the judge know if you do not understand something that is said, if you cannot hear, if you want to ask a question or if you think someone has got something wrong.

The judge is in control of who speaks and when they speak. They are there to make sure that the hearing is fair, and everyone gets to have their say.

The specialist member(s) will have specialist experience of SEND and are there to advise the judge.

The following video may be useful if you want to find out more about what will happen at the Tribunal hearing.

[Video hearings at the Special Educational Needs and Disability Tribunal - YouTube](#)



What happens next?

The Tribunal will inform you of their decision within 10 working days of the hearing.

They may issue the LA with a court order, which is a legally binding direction the LA must follow within a certain timescale.

The timescale for the LA to comply with the decision depends on the type of court order which was given.

Court order	Timescale
To start an EHC needs assessment or reassessment	Within 4 weeks
To make/amend an EHC plan	Within 5 weeks
To amend the educational placement (section I)	Within 2 weeks
To continue to maintain an EHC plan	Immediately
To cease to maintain an EHC plan	Immediately

What to do if LA does not comply with court order?

If the LA does not take steps to implement the Tribunal’s decision, it is acting unlawfully and could be challenged by a judicial review. Please note, SENDIAS do not support at judicial reviews and they may incur a cost to you as they may require representation from a SEND Lawyer,

What to do if you disagree with Tribunal decision

You can appeal against the Tribunal decision and raise a case with the Upper Tier Tribunal. This can only be done if you feel the decision is wrong in law, not just because you are not happy with it. SENDIAS cannot support with Upper Tier Tribunal appeals.

You will need to ask permission to appeal first.



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The LA can also appeal the decision made by the Tribunal if they think the decision is wrong in law.



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Other resources

[Legal aid: Overview - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

[\(IPSEA\) Independent Provider of Special Education Advice](#)

[SOS!SEN – The Independent Helpline for Special Education Needs – We offer a free, friendly, independent and confidential telephone helpline for parents and others looking for information and advice on Special Educational Needs \(SEN\) \(sossen.org.uk\)](#)

[First-tier Tribunal \(Special Educational Needs and Disability\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

[How to appeal a special educational needs \(SEN\) decision \(SEND37\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk)



Frequently Asked Questions

What are my deadlines for appealing?

You have 2 months from the date of the decision letter or 1 month from the date of the mediation certificate, whichever is later.

What role will sendias play in the Tribunal?

If you choose to seek support from Sheffield SENDIAS in your appeal with the SEND Tribunal, we will support you with

- Understanding documentation from the SEND Tribunal e.g. LA response, court orders etc
- Support you in finalising your evidence and sending it to the Tribunal
- Support with completing working document

At the hearing we will act as the supporter – we can support at the hearing but we are not there to present your case or advocate your child's needs.

[Please see our Tribunal & Mediation Policy](#)

Is there a cost to attending mediation or lodging an appeal?

No, there is no cost to attending mediation or lodging an appeal for parents or young people. If you wanted to hire legal representation, such as a solicitor, there will likely be a cost involved as you will need to pay them a fee.

Can I withdraw my appeal and how do I do this?

Yes, but if it is withdrawn within 5 days of the hearing the Tribunal will likely direct both parties to attend the hearing and explain why the dispute was settled so close to the hearing date. You would do this through a consent order

What happens if my appeal is adjourned?

You will be sent a new order from the Tribunal with a new hearing date.