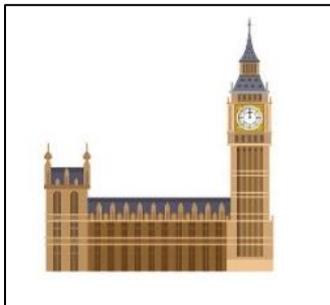


Appealing Against a SEN Decision:

This information is about appealing against a SEN decision in relation to an Education, Health & Care Plan (EHCP). This fact sheet covers the processes for appeal through mediation and the First-Tier Tribunal (SENDIST).

What can I appeal against?

The **SEND Code of Practice** states:



Parents (in relation to children from 0 to the end of compulsory schooling) and young people (over compulsory school age until they reach age 25) can appeal to the Tribunal about EHC needs assessments and EHC plans, following contact with a mediation adviser in most cases (see paragraph 11.18).

Young people can register an appeal in their name but can also have their parents' help and support if needed. (11.44)

Parents & young people (16+) can appeal against:

- A decision by the Local Authority **not to carry out an EHC Needs Assessment or re-assessment**
- A decision by the Local Authority that **it is not necessary to issue an EHCP following an EHC Needs Assessment**
- The description of a child or young person's **Special Educational Needs (Section B)** or **Special Educational Provision (Section F)** specified in the EHCP
- The school or other institution; type of school or other institution specified; or that no school or other institution is specified (**section I**) in the EHCP
- An **amendment to** these sections **B, F, and I** of the EHCP
- A decision by the Local Authority **not to amend the EHCP following a review or re-assessment**

- A decision by the Local Authority **to cease to maintain an EHCP**

If you are thinking of appealing against:

- refusal to carry out an EHC needs assessment or re-assessment;
- refusal to issue an EHCP; the description of need/provision in the EHCP;
- the decision not to amend an EHCP; or
- the decision to cease to maintain an EHC Plan

you must firstly **consider** participating in mediation.

For appeals against school/setting placement (section I), you are **not** legally required to consider mediation and can lodge an appeal straight to the First-Tier Tribunal, should you wish to do so.

How do I appeal?

To lodge an appeal, you must first receive a copy of the final EHCP, along with a covering letter from the SEN Team that states your right of appeal. You have **two months** from the date of this letter sent from the Local Authority, or within one month of receiving the mediation certificate to lodge your appeal – whichever is later.

You can firstly consider whether there is value in arranging to meet with the Local Authority outside of the 'formal' mediation process to discuss your concerns and why you feel they may have made the wrong decision. You can facilitate this meeting by contacting your assigned caseworker. Their contact details are included on any written communication you have received from the SEN team.

Mediation:

Mediation is a voluntary process for parents and young people which can be used if agreements cannot be reached about matters related to EHC plans.

It is provided by a trained and accredited mediator who is independent of the Local Authority. You have two months from the date of the decision letter sent from the Local Authority to request mediation or a mediation certificate.

As explained above, the parent/carer/young person is **legally required to consider** mediation in the first instance when lodging an appeal about any matters other than issues regarding placement named/not named in section I of the EHCP.

You may feel that there is value in participating in mediation with the Local Authority about the matter which you are appealing against. Alternatively, you may feel that you have had many discussions (and possibly meetings) with the Local Authority

about the issue you are appealing against and feel that engaging in mediation would not give you the different outcome you wish for.

It is your legal right **to** participate in mediation; equally, it is your legal right to decide **not** to participate in mediation.

If you are appealing against any valid reasons for appeal as above (apart from appealing against section I of the EHC plan), you **must** contact Global Mediation on **0800 064 4488** to either arrange a mediation session with the Local Authority, or to obtain a mediation certificate to verify that you have considered mediation.

It is only once a mediation certificate has been obtained (either through participation or consideration) that an appeal can be lodged to the Tribunal, should the issue not be resolved through mediation. You have one month from the date of your mediation certificate to lodge an appeal to the SEND Tribunal.

Lodging an appeal to the Tribunal:

For issues relating to refusal to assess; refusal to issue; description of need/provision; refusal to amend an EHCP; or the decision to cease to maintain an EHCP – you **must** have a certificate from Global Mediation to verify that you have either participated in, or considered, mediation.

For issues relating to placement named/not named in section I of the EHCP, you **do not** need this certificate and you can lodge your appeal straight to the Tribunal.

<https://www.gov.uk/appeal-ehc-plan-decision> provides the step-by-step processes for lodging an appeal to the Tribunal.

Appealing as a parent/young person:

You can appeal as a parent if you have parental responsibility for the child, or if you are their foster parent/carers. The child must be under or of statutory school age (016). If your child is over statutory school age (16+), they may be able to lodge the appeal themselves.

If you are aged between 16-25 years old, you may be able to bring the appeal forward on your own behalf.

The Tribunal states:



A Young Person is aged 16 or over and under 25 years old.

It should always be presumed that a Young Person has the mental capacity to make an appeal to the Tribunal. An appeal made by a Young Person will often be with the support of an advocate. An

advocate can be a parent, family member or other individual, including someone who is paid to do so. A Young Person can also appoint a representative to act on their behalf during the appeal process, including at the hearing.

If a Young Person cannot bring an appeal themselves – making an appeal as an Alternative Person?

If a Young Person does not have the mental capacity to bring an appeal and/or to make decisions about the appeal then it can be brought by an Alternative Person, acting in the best interest of the young person. This will be any Deputy appointed by the Court of Protection or if this has not happened, then usually, a young person's parents. It could also be a family member or someone from the LA's Social Care team. The Tribunal will still want to know what the Young Person's views are on the issues in the appeal but it is the views of the Alternative Person which they will consider in deciding the appeal. An Alternative Person can also appoint a representative during the appeal process including at the hearing if they wish to do so.

Whether you are lodging an appeal as a parent, or as a young person for yourself:

If you are appealing against the Local Authority's decision not to carry out an EHC Needs Assessment (refusal to assess), you need to download and fill in form [SEND 35A](#). (NB: appeals relating to refusal to assess decisions will be decided through a paper hearing, meaning that the Tribunal's decision will be given based on evidence provided, and an oral hearing will not be arranged unless specifically requested).

For all other appeals, you need to download and fill in form [SEND35](#).

Please be aware that appeals are evidence-based, and there is a checklist on both forms for evidence that must be included with the forms.

For appeals relating to placement (Section I), you should also send in basic information about the schools you are appealing against & the school you are appealing for a place in; this should include their OFSTED reports and their prospectus's, and what provision they can offer, if you have this information.

Something else to consider is checking your [eligibility for legal aid](#). If you are eligible, you may be able to access legal support for your appeal.

What happens once I've sent the form & evidence in?

- After you send in your appeal, the SEND Tribunal will reply within **10 working days** (working days do not include Saturdays, Sundays, bank holidays, any day between 25 December to 1 January, or any day in August) of registering your appeal.
- In this registration letter, the SEND Tribunal will tell you about important dates. It will tell you when the LA are required to respond to your appeal, give you a deadline to send further evidence and tell you when the hearing date will be. (*Please note: you will not be given the hearing time or venue until at least 10 working days before the hearing is due to take place. The Tribunal endeavours to always hold hearings within 2 hours of your postcode*).
- The hearing date will be approximately **12 weeks** from the date your appeal was registered (remember, for refusal to assess appeals, there will be no physical hearing).
- At the same time, the SEND Tribunal will write to the LA, sending them a copy of your appeal documents.
- The LA will need to submit its response to the SEND Tribunal **within 30 working days of receiving your appeal documents from the SEND Tribunal**. The LA must state whether it opposes your appeal and why. The LA must send you a copy of its response at the same time: tell the SEND Tribunal if you are not sent this.
- Ensure that any evidence you didn't send in with your appeal form, or any new evidence, is sent to the SEND Tribunal by the deadline set. Always send a copy to the LA at the same time.
- At least **10 working days** before the hearing, the LA will send you and the SEND Tribunal the 'bundle', a page-numbered set of the documents the SEND Tribunal has been sent in the case.

You should also think about who you may like to be present at the hearing as your witness(es). These will generally be professionals who know your child and understand their needs well (e.g. Educational Psychologist, Speech & Language Therapist, Occupational Therapist, Physiotherapist, Psychiatrist, SENco/teacher, Deputy Head/Headteacher etc). It's best to let your witness(es) know the hearing date as soon as possible. You can have up to 3 witnesses but can request more if necessary – this decision will be at the discretion of the Tribunal.

What happens at the hearing?

- You should always bring the bundle with you to the hearing. It is helpful to go through the bundle prior to the hearing and highlight/mark any points you'd like to raise during the hearing.
- The hearing will be led by a panel. For most hearings, this will be two people – a judge and a specialist panel member who will have experience of children and young people with SEND. There may be a third member of a panel present, but this is unusual.
- There are a host of videos available on [YouTube provided by the Tribunal service to represent what a hearing is like](#).
- Be aware that the judge is likely to ask you questions. You can also ask questions to the LA's witnesses so it's a good idea to prepare some that could support your position.
- The Tribunal will let you know the outcome of the hearing within 10 working days of the hearing being held.

Additional resources that you may find helpful (from IPSEA)

[What is the SEND Tribunal?](#)

[Where can I get help with making an appeal?](#)

[Refusal to Assess Appeals](#)

[Appeals about the contents of an EHCP](#)

[Challenging the Tribunal's decision](#)

For information, advice and support about appealing against a SEN decision, you can contact SENDiass 4 BCP on:

01202 451970 (**Bournemouth** and **Christchurch** area)

01202 261933 (**Poole** area)

sendiass@bcpcouncil.gov.uk