

Appealing the name of the education setting - part I (plus considering contents) of the Educational Health and Care Plan (EHCP) to the SEND Tribunal - Step by Step Guide



First-tier Tribunal (Special Educational Needs and Disability)

Before you start the appeal process (Step 3), you could try speaking with your Local Authority EHC Plan Co-ordinator. You could discuss how to resolve your disagreement informally within a reasonable time-frame, bearing in mind the time-scale you have to complete the process shown below.

This easy use step-by-step guide is designed to help you with your appeal to the Tribunal.

However, if you want to look at a full guide, see the government guidance - **SEND 37, guide to appealing:**

<https://www.gov.uk/government/publications/how-to-appeal-a-special-educational-needs-sen-decision-sen37>

It explains that “*even after an appeal has been made, parents or a young person and the LA should continue to try to reach agreement by discussing the case*”. Additionally note that although the SEND 37 guide mentions attending a Tribunal building or family court room, now in practice all tribunal hearings are heard over a video link.

Do I need a Mediation Certificate?

You *don't* need a mediation certificate if you are just appealing the name of the setting. However, if you are also appealing the contents of the plan eg parts B (needs) and F (provision) in your EHCP you will need one (you don't have to attend a mediation meeting).

If you are running out of time – note that you can request a mediation certificate before the end of the two-month deadline from the date on your LA decision letter, which will give you an extra 30 days. Otherwise, you could try and send a late appeal giving your reasons why.

Only if you need a mediation certificate, contact KIDS Mediation Service (note this is a free service): Tel: 03330 062 835 Email: senmediation@kids.org.uk

<https://www.kids.org.uk/mediation-home/for-families/>

Important! You must send your appeal to the Tribunal **no later than 2 months from the date on the Local Authority's decision letter that came with the EHCP**. (Or within one month of the date of a mediation certificate if later).

Example: Mrs H receives a letter from the Local Authority with the final plan for her son, dated 10th January. Therefore, 2 months from the date on the letter will take her to the 10th March. The mediation certificate is dated 5th March, so Mrs H would then have until 5th April to send her appeal request to the SEND Tribunal.

January							February							March							April						
S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S
				1	2	3							1	1	2	3	4	5	6	7				1	2	3	4
5	6	7	8	9	10	11	2	3	4	5	6	7	8	8	9	10	11	12	13	14	5	6	7	8	9	10	11
12	13	14	15	16	17	18	9	10	11	12	13	14	15	15	16	17	18	19	20	21	12	13	14	15	16	17	18
19	20	21	22	23	24	25	16	17	18	19	20	21	22	22	23	24	25	26	27	28	19	20	21	22	23	24	25
26	27	28	29	30	31		23	24	25	26	27	28	29	29	30	31					26	27	28	29	30		

- Decision letter sent by LA (10th Jan) — 2 months from letter sent (ends 10th Mar)
- Mediation certificate (5th Mar) extends deadline to 5th April

Step 1: The Decision Letter and Final Education, Health and Care Plan (EHCP)

Make sure you have the final or amended final EHC plan (**not draft**) which will include the Local Authority (LA) decision letter. The LA **must** inform you of your right to appeal in a dated letter, which you should receive from the EHC Plan Co-ordinator at the Council. You **cannot** appeal without this letter.

Step 2: Legal Aid

You do not need a solicitor to appeal, as it is not a complicated form. However, you could try the on-line Legal Aid Checker by clicking onto the link below, to find out if you are eligible for Legal Aid. For young people aged 16 and 17 who live at home with their parents, the parents are regarded as the client and so the parents' income will be taken into account. Where a young person aged 18 or over who is in receipt of Employment Support Allowance, he or she will be the client and only his or her means will be considered: <https://www.gov.uk/check-legal-aid>

Step 3: Start here to complete the SEND35 Appeal Form – link below:

Form SEND35 is the Special Educational Needs and Disability Tribunal form you will need to complete for your appeal. Click onto or copy the following link. Download the SEND35 form and save it before your start to complete it (make sure you save it as you go along). Keep it saved ready for when you attach it to an email to the Tribunal: <https://www.gov.uk/government/publications/form-send35-special-educational-needs-and-disability-tribunal-appeal>

Alternatively, you could try using the on-line GOV.UK portal and attach your documents:

<https://appeal-about-ehc-plan-decision.form.service.justice.gov.uk/>

Appealing the name of setting (see part I - near the end of the EHC Plan)

You will be appealing part I of the final EHC plan if you don't agree with the name of the setting written in that section, or it just states a type of school. You can even appeal if it has been left blank in the final EHC plan. (If you have a new **draft** EHC plan, part I will always be left blank, so make sure you have the final EHC plan or amended final EHC plan when you appeal).

Check with the Local Authority EHC Plan Co-ordinator (whose name and contact details will be on the decision letter from the council) has consulted with the setting/s of your preference. Also contact the setting/s to inform the head/principal that you have requested a place there as part of the appeal process. If you phone, make a note of any response (to add in the appeal form). You can include more than one name of setting of your preference on the appeal form if you wish.

Include evidence on your form taken from your EHC plan, particularly from part B (Needs) which may describe how your child is struggling or presenting in the current environment. Include information if your child is only in school part-time or finding it difficult to attend. Also use any evidence in part F (provision) of the EHC plan which would describe what support your child **must** be given to meet those needs, such as expertise/staffing, therapeutic or specialist type of support, specific type of curriculum, small groups and specific *environment* which should inform placement. You will have an opportunity to send further information at a later date.

Should I appeal parts B (needs) and F (provision)?

If the EHC plan does not include evidenced areas of SIGNIFICANT need/provision in the plan to inform the type of setting, you may want to consider appealing part B/part F of the EHC plan. You may also be waiting for a professional's report, that you are aware has some significant recommendations for provision that you would wish to be included in the EHCP (remember you will need a mediation certificate). If appealing B and F, you could just add a sentence for now to say you don't agree with what is stated in these sections, as you will have the opportunity to negotiate this information with the LA up until near the Tribunal date (see the Key Dates table on the next page). However, if there are some *less* significant pieces of information that you wish to be included in the EHC plan, then you may want this to be considered at an Annual Review instead.

You can add any copies of reports/ annual review paperwork and any information to assist your case as evidence. If possible, include your child's voice such as in their own writing/ a drawing or via another person working with your child (add their name and profession). For more information:

<https://www.ipsea.org.uk/appealing-against-the-school-or-other-setting-named-in-your-ehc-plan>

Step 4: Sending the Appeal by email

Make sure your completed appeal form is signed and dated (just enter your name in the signature section if you do not have an electronic signature). Also, you **must attach the EHC plan, Local Authority decision letter (plus mediation certificate if you are appealing contents of the plan also or if you need an extra 30 days before the end of the 2 months deadline)**. Any other reports that are available at the time you can include, but don't delay as you can send further information later. Eg if the appeal is about your child's new EHC plan, you can include reports that came with it or paperwork following Annual Review and any other reports that are available now. Type in the subject heading: **'New Appeal'** to ensure it is dealt with quickly. If your child is moving to Reception, Year 7, post 16 or in school part-time/ out of school, then add this to the subject heading, as this may help with priority. Email your appeal and attachments to: send@Justice.gov.uk

The Tribunal prefer electronic methods of submitting your appeal, but if you are posting a paper version, the address is: *HM Courts & Tribunals Service Special Educational Needs and Disability Tribunal 1st Floor, Darlington Magistrates Court Parkgate Darlington DL1 1RU*
If you need to contact the Tribunal Helpline then phone: 01325 289350/ 0300 303 5857

If the appeal is submitted to the Tribunal more than 2 months after the date of the Local Authority's letter, you must set out in writing the reasons for the delay and why you think the appeal would succeed if time for making the appeal is extended otherwise, the papers will be returned to you without being registered or seen by a Tribunal Judge.

Step 5: What happens next? Can I make any changes/send further information?

How long does the appeal take?

Can I request an earlier hearing date?

Can I amend or add additional schools in my appeal?



You should receive an automatic response from the Tribunal immediately, so if that is not the case, check your junk mail/ the email address is correct or phone the Tribunal Helpline: 0300 303 5857. Next you will receive the registration notification (within 20 working days, so contact the tribunal if not). An attached letter will inform you of dates for actions, eg when to **send further information**

and the date of the final hearing. To make a request for any changes from your original appeal, amend any dates/ **request an earlier hearing date**, or if you did not name a school in your original appeal, but later would like to name one or more/ changed your mind, you can do so by using the **Request for Change Form (SEND7)**. You **must** obtain the LA's response to your request before sending this form to the Tribunal and cc the LA when sending anything further to the Tribunal:
<https://www.gov.uk/government/publications/form-send7-request-for-change>

Your letter will include a time-table with **Key Dates**. See below an example (Tip: you could add the dates to your diary with 'to do' reminders beforehand):

Action and party required to respond	Date for compliance
The LA must send its response to the parent(s), young person or alternative person and the Tribunal so that it is received by:	12 noon on 18/02/2024
<p>The parent(s), young person or alternative person and LA must send to each other and to the Tribunal any final evidence - such as further written information, including professional reports - upon which they intend to rely as soon as it is available. No further evidence will be accepted without express permission of the Tribunal from either party after:</p> <p><i>[You may wish to respond to the LA's first response. Think about why the school named by the LA is not 'suitable' and why the school/s you have named are suitable in relation to the EHCP/evidence. Eg own further report/ child's voice/ Annual Review paperwork (if another has taken place) / report from a potential witness such as the SENCO/ professional. Note: the witness/es you wish to attend the hearing, should have produced a report already. If not, you could ask them to produce a short summary before this date, in time for you to send.</i></p> <p>'Working Document' – this is the EHCP. Only relevant if your original appeal included appealing the contents of the plan (eg parts B and F). The EHCP Co-ordinator should send your version 1, then amend versions regularly between yourself and your EHCP Co-ordinator, to agree as much as possible before the hearing. The most up to date version should be sent by the LA at least ten working days before the hearing date. Note: No time is set aside to negotiate the contents of the EHCP, on the day of the hearing.</p> <p>Next: when emailing further information to the Tribunal, add in the email subject heading: the hearing date, subject matter, case number and child's name eg: HD 23/10/2023 Further Information from Parent EH321/24/00068 J Bloggs.</p> <p>Then send to the Tribunal: send@justice.gov.uk and you must also cc the LA eg the EHCP Co-ordinator if you have their email or if not then sen@coventry.gov.uk]</p>	12 noon on 13/04/2024
<p>The LA and the parent(s), young person or alternative person must send a completed Case Review Form to the Tribunal and each other to be received by: <i>See link below for this form:</i> https://www.gov.uk/government/publications/report-issues-with-a-case-to-the-tribunal-form-send45</p> <p><i>It should include your witness/es you wish to attend the hearing. You can include a witness already named by the LA to ensure their attendance, even if they are employed by the council. State your preference of a paper hearing or a video hearing in section 14, but be aware that the LA would have to also agree to a paper hearing. Don't forget to include in the subject heading of your email: the hearing date, subject matter, case number and child's name:HD 23/10/2023 Case Review form from Parent EH321/24/00068 J Bloggs</i></p> <p>Then send to the Tribunal: send@justice.gov.uk and cc the LA EHC Plan Co-ordinator if you have their email or if not then sen@coventry.gov.uk]</p>	12 noon on 27/04/2024
<p>The LA must produce and send to the Tribunal and the parent(s), young person or alternative person an electronic copy of the bundle (plus a paper copy if reasonably required) so that it is received by: <i>[It is the LA's role to collate all information that the parent and LA have already sent to the Tribunal, together in one document electronically. Check all the relevant documents are included. Coventry LA usually only offer a paper copy to collect, if on request if it is reasonably required]</i></p>	12 noon on 27/04/2024
<p>The date of the final hearing: <i>[See the link above – Step 5. Request an earlier date, at least a month after the above LA 'bundle' date & so does not affect the other action dates. Eg in this case you could request a hearing, "after May 2024 half-term & before the summer break, July 2024"]</i></p>	11/12/2024

For all the SEND Tribunal forms see the following link:

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

Step 6: The Hearing including link to YouTube video guide



Do I have to attend the hearing?

You will receive instructions from the Tribunal just before the hearing date eg how to join by video-link. All hearings are by video link, unless the Tribunal and both sides agree it can be decided as a paper hearing only, on the written evidence. This gives you your right to attend the video hearing and to speak up about your appeal. The hearings are set up to be very parent friendly. However, if you really don't want to attend, you can request a paper hearing with the Request for Change Form, but the LA **must** also agree: <https://www.gov.uk/government/publications/form-send7-request-for-change>

You would need to obtain the LA's response to your request before sending this form to the Tribunal. If the LA do not agree, then a video hearing would still go ahead. The tribunal do their best to support parents that have additional needs or need an interpreter. If you still feel you cannot join the video hearing, the guidance states that the tribunal will **not** look less favourably on parents if they feel they are unable to attend, but you would need to let everyone know. The decision of the appeal is sent by email to all parties, usually 10 days after the hearing.



The following link to the YouTube video explains what happens on the day of the hearing and how to prepare for it:

<https://www.youtube.com/watch?v=SPEMtWWYAZ8>

Useful information:

I haven't received my letter from the LA informing me of my right to appeal with the Final EHCP



If you have not received this letter with your final or amended final EHCP within the time limit, email or write to your EHC plan Co-ordinator to make a formal request for this information:

SEN@coventry.gov.uk Statutory Assessment and Review Service, PO Box 15, Council House, Coventry CV1 5RR Tel 024 7683 1614. You cannot appeal to the Tribunal without this (you know it's the correct letter if it includes information about your right to appeal), therefore if necessary you can make a complaint to the Coventry City Council:

https://www.coventry.gov.uk/info/5/contact_the_council/545/comments_compliments_and_complaints/2

If this has not resolved the problem, you can then contact the Local Government Ombudsman: <https://www.lgo.org.uk/make-a-complaint>

Useful contacts:

- **Statutory Assessment and Review Service (Local Authority EHC Plan Co-ordinator from the council):** SEN@coventry.gov.uk Tel 024 7683 1614
- **SEND Information Advice and Support Service:** <https://www.covsendiass.co.uk> Tel 024 7669 4307
- **SEND Code of Practice:** <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>
- **Coventry Family Hubs and SEND Local Offer:** <https://www.coventryfamilies.co.uk/?page=send-home>



Parents in Need is a charity which supports families of children with Special Educational Needs by funding professional's reports
<https://www.parentsinneed.org/> Contact: info@parentsinneed.org

SOS!SEN

SEN is a national charity aiming to empower parents and carers of children with SEN to tackle successfully themselves the difficulties they may face regarding their children's rights.

https://www.sossen.org.uk/useful_tips_for_parents.php Tel 0300 302 3731 or 0208 538 3731



LawWorks is a charity working in England and Wales to connect volunteer lawyers with people in need of legal advice who are not eligible for legal aid and cannot afford to pay. If you are being helped by a not-for-profit organisation they can also support them www.lawworks.org.uk



This website helps parents of children with special educational needs and/or disabilities living in England to get the right educational provision for their child or young person.

They have a number of downloadable resources including template appeal forms with examples of how to complete them. Documents also include research, caselaw, and model letters: <https://www.sen-help.org.uk/>



IPSEA

Independent Provider of Special Education Advice (known as IPSEA) is a registered charity. IPSEA offers free and independent legally based. They also provide training on the SEND legal framework to parents and carers, professionals and other organisations.

www.ipsea.org.uk <https://www.ipsea.org.uk/appealing-to-the-send-tribunal>



The NAS, a leading national charity supporting people with autism and their families, maintains a list of solicitors in the Advocacy (legal) section of its comprehensive Autism Services Directory.

<https://www.autism.org.uk/>

Tel 0808 800 4104.