

Somerset SENDIAS



Free impartial, information, advice and support service for children and young people from 0-25

Information session for parents and carers about the SENDIST Tribunal process

What we do



Somerset SENDIAS provides information, advice and support about special educational needs and disability (SEND) for parent carers, children and young people (up to the age of 25).

The service is free, confidential and impartial. We encourage partnership working with schools, colleges, early years providers, the Local Authority and other statutory and voluntary services, so that children, young people and parent/carers can be part of decision making.

“Local Authorities **must** arrange for children with SEN or disabilities for whom they are responsible, and their parents, and young people with SEN or disabilities for whom they are responsible, to be provided with information and advice about matters relating to their SEN or disabilities.” COP 2015 para 2.1

Tribunal Process

Mediation

Before you start the Appeal process, you might want to consider Mediation. Mediation is a less formal way of trying to resolve the disagreement without having to Appeal.

Somerset Local Authority use Global Mediation service. Global Mediation is a provider which will arrange a meeting with yourself, someone from the LA and an independent Mediator to discuss your concerns with the aim to resolve any disagreements between yourself and the LA. It is free of charge.

You will need to contact Global Mediation to arrange a meeting to obtain a Certificate to make your Appeal. (You do not need a mediation certificate for placement only appeals)

You can obtain a Mediation Certificate in two ways:

- ❖ Undertake Mediation, and if it does not settle all of the points in disagreement, you will be issued with a Mediation Certificate confirming you took part in Mediation; OR
- ❖ Speak to a Mediation Advisor, and you will be issued with a Mediation Certificate confirming you have been told about your right to Mediate but you do not want to do so, so you go straight to Appeal.

About the Tribunal Process

What you should know...

You can Appeal the LA decision if you have parental responsibility for your child. Your child must be under the school leaving age (16 years old)

If your child is older than 16, they can appeal on their own behalf, as a Young Person.

There are no fees for parents to pay. The First-Tier Tribunal has the power to order LAs to carry out EHC needs assessments, issue EHC plans, and amend existing EHC plans. LAs **must** comply with orders made by the SENDIST Tribunal.

First-Tier Tribunal (Special Educational Needs and Disability)

What can I appeal?



First-Tier Tribunal (SEND) handles appeals against Local Authority (LA) decisions.

As a parent/carer you can **Appeal** if you **disagree** with the LA decision:

- ❖ **Refusal to Assess** – LA refuse to carry out an EHC assessment OR reassessment
- ❖ **Refusal to Issue an EHC Plan** – LA refuse to create an EHC plan (after carrying out an assessment OR reassessment)
- ❖ **Refusal to make Amendments following an annual review** – LA don't change the sections of an existing EHC plan (Sections B, F and I)
- ❖ **Cease to Maintain an EHC Plan** – LA decide they do not need an EHC plan any more

Tribunal Process – How to Appeal

To make your appeal you will need to download and fill in a form from the gov.uk website.

There are different forms for different appeals

A SEND35 form is for making an appeal for refusal to issue, refusal to make amendments (Sections B,F,I) and maintaining an EHCP.

Please click on the links to download or print the Appeal Form.

[Form SEND35: Special Educational Needs and Disability Tribunal appeal - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/forms/send35-special-educational-needs-and-disability-tribunal-appeal)

The SEND35A form is if you're appealing the LA decision not to carry out an EHC assessment

[Form SEND35a: Special Educational Needs and Disability Tribunal appeal a refusal to secure an EHC Needs Assessment - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/forms/send35a-special-educational-needs-and-disability-tribunal-appeal-a-refusal-to-secure-an-ehc-needs-assessment)

Please make sure you have the correct form before you begin. The tribunal must receive your Appeal within 2 months of the date on the local authority's decision letter or a month from the date of the mediation certificate - whichever is later.

Special Educational Needs and Disability Tribunal
Application for appeal
 Child or young person

Who can bring an appeal?
Appeal concerning a Child
 An appeal concerning a child aged 0 – 16 years can be brought by a parent or parents, someone with parental responsibility or someone who cares for a child. That person can appoint a representative to act on their behalf during the appeal process including at the hearing if they wish to do so. They can also have an additional person, a parental supporter, to attend an appeal hearing to give them further support.

Appeal about a Young Person
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 LSC 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.

Who can be an advocate?
 An advocate is someone who knows the young person, who understands what they think about the issues in the appeal and so can speak on the young person's behalf. They can be a parent, family member, friend or a paid advocate. They are not someone who can give advice on the issues in the appeal.

Who can be a representative?
 A representative is someone who will give advice on the issues in the appeal, prepare the paperwork and represent the person making an appeal to the Tribunal. They can also be an advocate. They could be a volunteer from a charity, a paid representative, a solicitor or barrister.

Most appeals to the Tribunal are made without a Representative. The Tribunal will support both parties through the process of making an appeal to ensure that it is decided fairly and justly.

About this form
 This form helps you provide all the information the Tribunal requires to register an appeal. It will also ensure that your appeal contains all the necessary details which the law requires.

How to fill in this form
 Please use BLOCK CAPITALS unless the form tell you not to, or complete the form electronically and send to the tribunal.

Contact Details
 The tribunal's preferred methods of communication are by email, phone or text. Therefore, it is crucial that you let the tribunal know of any change of email address, phone number or postal address.

How to Complete Application Appeal Form



Page 1: Application for Appeal – the first page details who can bring an appeal. By filling it in provides all the information the Tribunal requires to register an Appeal. It will also ensure that your Appeal contains all the necessary details which the law requires.

The Application Appeal form has 12 Sections.

Section 1: Who is the appeal about?

A **child** under 16 years old

A **young person** aged 16 or over and under 25 years old

Surname

First name(s)

Gender Male Female Other

Date of birth

Section 1 Who is the Appeal about?

Section 1 **has to be completed for all Appeals.** This is your child's details – Full Name, Gender and Date of Birth.

The form can be printed and hand written in block capitals or typed using any device by clicking in each section.

Section 2: What are you appealing against?

I am asking the Tribunal make a decision on the following issues (please tick all those that apply)

- The Local Authority secured an EHC assessment but refused to make an EHC plan
 - The Local Authority has issued an EHC plan following an EHC Needs Assessment
 - The Local Authority has refused to secure a Re-Assessment of EHC Needs
 - The Local Authority has carried out an annual review of the EHC plan
 - The Local Authority has refused to amend the EHC plan after an EHC Needs Re-Assessment
 - The Local Authority has decided that the EHC plan is no longer necessary and are going to 'Cease to Maintain' the plan
- and**
- I disagree with what the EHC plan says about the child or young persons special educational needs (Section B)
 - I disagree with what the EHC plan says about the educational help/provision the child or Young Person requires (Section F)
 - I disagree with the school/college/institution named in the EHC plan (Section I)
- or**
- The Local Authority has not named a school/college/institution in the EHC plan (Section I)

If you are appealing against Section I of the EHC plan please provide the name and address of the school/college/institution that you are asking the Tribunal to name instead:

Name of school/college/institution

Address

Postcode

Please confirm that you have contacted the school/college/institution about the child or Young Person attending there, the date you did so and any response they made:

If you cannot name a particular school/college/institution, please describe the type of school/college/institution you would prefer in Section I:

Section 2 What are you appealing against?

Section 2 - Read this section carefully and tick the boxes that explain why you are making the Appeal. Please tick all those that apply.

Placement

If you disagree with the school/college/institution named in the EHC Plan (Section I) you are required to fill in your preference/choice in this section.

Section 3: Reasons for appeal

I am bringing the appeal because (to be completed in all appeals):

I disagree with the description of special educational needs (Section B of the EHCP) because:

I disagree with the specification of special educational provision (Section F of the EHCP) because:

The LA have not considered

I disagree with the LA's choice of school/college/institution (Section I of the EHCP) because:

I prefer my choice of school/college/institution (Section I of the EHCP) because:

Section 3 Reasons for Appeal

I am bringing this Appeal because... has to be completed for all Appeals.

Complete the boxes that apply for to your case to include why you disagree with LA's decision.

Section 4: Reasons for asking for a recommendation for Health and/or Social Care

Where an application for a health and/or social care recommendation has been made the Local Authority will send a copy of the appeal form to the health and/or social care provider.

I disagree with the health care needs and health provision (Section C and G if concerning an EHC plan) because:

I want the Tribunal to make a recommendation about the health care needs and health provision (Section C and G if concerning an EHC plan) as follows:

I disagree with the social care needs and social care provision (Section D and H if concerning an EHC plan) because:

I want the Tribunal to make a recommendation about the social care needs and social care provision (Section D and H if concerning an EHC) as follows:

Section 4 Recommendations for Health and Social Care

Section 4 is only to be completed if you would like to make recommendations about Sections C, D, G & H.

Tribunal will be able to also consider issues concerning a child social care needs in certain circumstances including Sections C, D, G & H of an EHC Plan. This will only be where an appeal concerning educational issues is being made to the Tribunal.

If not, then leave it blank.



We recognise that some parents feel worried or unsure about completing Section 3 and 4 of the Appeal Form.

It may be reassuring to know that the grounds of appeal don't have to be lengthy or written in legal language. This part of the form is your chance to explain and inform why you disagree with LA's decision.

There are no right or wrong answers or "magic phrases" to use but try to keep it factual, precise and explain your reasons clearly.

You must give reasons for the appeal and include any issues that you want the Tribunal to decide and tell them what you want as an outcome.

Section 5: Making the appeal

LA decision

Which local authority made the decision that you are appealing against?

What is the date on the decision letter from the local authority?

Late appeal or no mediation certificate

You must send your appeal to the Tribunal no later than 2 months from the date of the Local Authority's decision letter or within one month of the date of the mediation certificate, if later.

If the appeal is submitted to the Tribunal more than 2 months after the date of the Local Authority's letter or one month after the date of the mediation certificate, 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. If you do not do so, the papers will be returned to you without being registered or seen by a Tribunal Judge.

If you do not have mediation certificate you must set out in writing why you have not been able to get one. If you do not give an explanation, the papers will be returned to you without being registered or seen by a Tribunal Judge.

My appeal is being made late
 I do not have a mediation certificate

Please explain why this has happened:

Section 5 Making the Appeal

Section 5 must be completed for all Appeals.

The Local Authority that you are appealing against is **Somerset**

Include the date from your LA decision letter – The tribunal must receive your Appeal within 2 months of the date on the local authority's decision letter or a month from the date of the mediation certificate - whichever is later.

If you are making a late Appeal, in this section is where you can explain why.

Section 6: Who is making the appeal?

I am making this application to appeal.

Please tick only one of these options – see page 1 for explanations:

Parent or other – on behalf of a child under 16 years old
 Young Person – aged 16 and under 25 years old
 Alternative Person – making an appeal in the 'best interests' of a young person who does not have the Mental Capacity to bring an appeal themselves

A. Details of first person making the appeal

Mr Mrs Miss Ms
 Other

Surname

Home address

First name(s)

Postcode

If you are not the Young Person, what is your relationship to the child or Young Person e.g. parent, foster parent

Daytime phone number

Mobile phone number

Email address

B. Details of second person making the appeal

Mr Mrs Miss Ms
 Other

Surname

Home address

First name(s)

Postcode

If you are not the Young Person, what is your relationship to the child or Young Person e.g. parent, foster parent

Daytime phone number

Mobile phone number

Section 6 Who is making the Appeal?

Section 6 must be completed for all Appeals.

Parent Details – complete Section with your contact details.

If any of your contact details change during the Appeal process it is your responsibility to notify the First Tier Tribunal & Somerset LA.

Section 7: Who else is involved in the appeal?

If any other person or organisation shares parental responsibility for the child or has been appointed as a Deputy by the Court of Protection for a Young Person, please give the name and contact details of each person or organisation and confirm that you have notified them of the appeal:

If you believe they should not receive details of the appeal, please explain why:

If any other court or tribunal has made an order concerning the child or young person, including the family court, you must provide the details:

Section 7 Who else is involved in the Appeal?

Section 7 must be completed if any other person shares parental responsibility for the child.

Please note – Section 7

Your Advocate – Applies to Young Persons (16-25 years old)

Your Representative – If you have appointed a representative to support you in making the appeal.

Section 8: The hearing – your needs and requirements

Please tell us here about any special needs you may have which we need to take into account when arranging your hearing. This might be things such as hearing loops or disabled access.

Question 1 – Your needs

Do you have any special needs? Yes No

If Yes, please tell us about this in the box below

Question 2 – Your signer or interpreter and language requirements

Do you require an interpreter or signer to assist you at the hearing? Yes No

If Yes, please tell us the language and dialect required below

Language or type of sign language interpreter

Dialect

We will arrange for a professional interpreter to be present at the hearing.

Section 8 The hearing – your needs and requirements

Section 8 must be completed for all Appeals.

Please answer Question 1 and Question 2 regarding any of your own needs or requirements.

Section 9: Paper hearing

If the Tribunal agrees, do you agree that the appeal can be determined on the written evidence without an oral hearing? Both parties and a Judge must agree to the appeal being heard on the papers, only after the Local Authority's response has been received. Yes No

I consent to the final hearing of the appeal being listed on an earlier date if one becomes available Yes No

Existing claims/appeals

Is there another current appeal or claim in relation to this child or a sibling, that is being dealt with at the moment? Yes No

If Yes, please give the appeal number

Section 9 Paper Hearing

Section 9 must be completed for all Appeals.

Some tribunals can be done with a paper hearing. You can state your preference in this section.

If you have a current Appeal or Claim in relation to your child or a sibling you must make the Tribunal aware.

Section 10: Checklist

I confirm that the following documentation is enclosed with this appeal form:

- A signed and dated letter from the Local Authority giving you the right of appeal to HM Courts & Tribunals Service (**Local Authority decision letter**)
- A copy of the **signed mediation certificate** or I confirm that my appeal is about the school/college/institution or type of school/college/institution only whereby a mediation certificate is not necessary
- Your reasons for making the appeal (**see section 2 of the appeal form**)
- A copy of your child's EHC plan and all the documents listed in **Part K (where a plan has been issued)**
- The appeal form has been **signed and dated**

Section 11: Please sign below

1st Parent or Young Person's signature

If you are sending your appeal via email please type your name in the signature box.

2nd Parent signature

Representative signature
(a qualified lawyer can sign on your behalf with your permission)

Who are you representing?

- 1st Parent
- 2nd Parent
- Young Person

Date / /

Section 10 Checklist

Section 10 must be completed for all Appeals.

Section 11 Parent Signature

Section 11 must be completed for all Appeals

Please ensure you sign and date the Appeal Form.

To make your Appeal you must have the following:

- ❖ LA Decision Letter – signed and dated
- ❖ Copy of signed Mediation Certificate (unless you are just appealing Section I)
 - ❖ Your reasons for Making the Appeal – Section 2 of the Appeal Form
- ❖ A copy of your child's EHC plan and all the documents (when a final plan has been issued)
 - ❖ The Appeal Form – signed and dated.

Section 12: Sending us your appeal

When you have completed the appeal form and signed it, please send it and all other relevant documents to
 Email: send@hmcts.gsi.gov.uk - write in the subject line of your email 'New Appeal' to ensure it is dealt with quickly

JHM Courts & Tribunals Service
 Special Educational Needs and Disability Tribunal
 1st Floor, Darlington Magistrates Court
 Parkgate
 Darlington DL1 1RU
 Fax: 0870 739 4017

If you need to contact us by telephone our number is: 01325 289350

Please keep a copy of the appeal form.

You must send your appeal to the Tribunal no later than **2 months** from the date of the Local Authority's decision letter or within one month of date of the mediation certificate if later. If the appeal is submitted to the Tribunal more than 2 months after the date of the Local Authority's letter or one month after the date of the mediation certificate, 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 and if you do not do so, the papers will be returned to you without being registered or seen by a Tribunal Judge.

When sending your appeal to the Tribunal please list all the documents and evidence you are sending in using a table format as shown below.

Date of document	No. of pages	Name of person who signed or wrote it and the type of document	What is the relevance of this document?
21.11.16	25 pages	Dr M. Smith, Educational Psychologist	Assessment of needs

Section 12 Document Table

Section 12 gives details of where to send the completed Appeal Form – documents can be posted or emailed.

Advice for Posting

- ❖ Make a copy of the Appeal Form before posting
- ❖ Never send your original documents – post copies
- ❖ Post it recorded delivery with proof of postage

Advice for Emailing

- ❖ When completing your Appeal Form using a device, you can type in your full name instead of trying to insert a digital signature
- ❖ Save your own copy of the Appeal Form or print it for your records
- ❖ When sending your email the subject line should be: NEW APPEAL

Collating Evidence: The evidence you submit as part of the appeal should be relevant to your disagreement. Include any information, reports or documents from the last 12 months to ensure it is recent and most like your child at present.

If your child already has an EHC Plan you should also include the final copy and any documents that are referenced too or listed in Section K.

Complete the table in Section 12 to list all your evidence. We refer to this as gathering evidence to support your case.

Witnesses

As part of the Appeal process and preparing for hearing, you may want to invite a witness to support your case. You can have up to three witnesses as part of the hearing.

If you wish for a witness to attend you will need to notify the SEND Tribunal using an Attendance Form.

Attendance form – parents

Child's name

Appeal/Claim no.

Full name of parent 1

Full name of parent 2

Is the child attending the hearing? Yes No

Name of representative or helper

Profession

Name of first witness

Occupation

Name of second witness

Occupation

Name of third witness

Occupation

For any additional witnesses please complete request for changes form SEND7

Special requirements – please let us know of any special requirements you or your witnesses may have.

If this completed form is not received by 5pm [insert week 9] your witnesses may not be able to attend.

IPSEA Witness Advice:

You should call witnesses who will be able to give evidence relevant to your case. It will normally be helpful to have someone from the child or young person's school or college (such as the SENCO or head teacher). If you want a particular school to be named in the EHC plan, you will need someone from that school to attend. If there is a dispute about the level of the child or young person's needs, it may be helpful to have a professional witness such as, for example, a speech and language therapist who has worked with the child or young person.

Preparing for the Hearing – 5 Steps

Step 1

When your completed paperwork has been sent, your Appeal will be registered within 10 working days of receipt. The SENDIST Tribunal will reply with information which should include an attendance form, a case management questionnaire and a date for the final hearing. You will also be given a timeline of events and an appeal number.

Step 2

The SENDIST Tribunal will also make contact with Somerset LA. They have 30 days to respond. Once the Appeal is registered all information must be shared with each other moving forward. You may still be able to resolve your disagreement with the LA before the hearing.

Step 3

About three weeks before the final hearing date you may receive an Active Case Management Call - The purpose of the call is to make sure that the appeal is ready for hearing and is likely to be effective on the day.

Step 4

At least 10 working days before the hearing, you will receive a full copy of the appeal bundle and details of the hearing time and venue. Have these documents with you for the hearing.

Step 5

At the hearing, the judge will want to hear anything you have to say and will ask questions about why you disagree with the LA decision, they will want to know a little bit more about your child.

Telephone Case Management Hearing & Paper Hearing

What is a Telephone Case Management Hearing?

Sometimes referred to as a TCMH, if there is an issue that has been raised that is not easily resolved, the Tribunal service will direct for a telephone case management hearing to be arranged.

This is a hearing that takes place by means of a conference call where the Tribunal, the Local Authority and you will be able to discuss the case over the telephone.

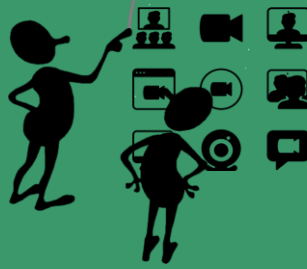
You will be provided with a telephone number and instructions of what you need to do to join the hearing.

Telephone hearings usually last between 20 and 30 minutes. The Tribunal Judge may issue a direction through a court order, which will be confirmed in writing.

What is a Paper Hearing?

A paper hearing means that the tribunal service will only consider the written evidence in private and no witness in attendance. Therefore you will not need to attend the hearing. Paper Hearings can only go ahead if everyone agrees to them.

Tribunal Hearings (Virtually)



First-Tier Tribunals are currently being held virtually – which means you will attend the hearing via a video link using a device which has a video and microphone. You will be asked questions by the LA, Judge and SEND specialist about your child and your reasons for appeal.

Who'll be at the hearing?

- ❖ a judge
- ❖ Up to two SEND specialists
- ❖ a clerk
- ❖ someone representing the Local Authority
- ❖ expert witnesses

Outcomes



The SEND Tribunal looks at the evidence put before it and makes a decision. You should receive the decision by direction in a court order shortly after the case is heard . The decision is also sent to Somerset LA.

Once SEND Tribunal's decision is issued, the LA must carry out the order within a fixed timeframe

- ❖ To start the assessment or reassessment process – 4 weeks
- ❖ To make a EHC Plan – 5 weeks
- ❖ To amend EHC Plan – 5 weeks
- ❖ To amend the school/college/institution – 2 weeks
- ❖ To continue an EHC Plan – immediately
- ❖ To cease (no longer maintain) an EHC Plan

Top 10 Tips



Here are Top 10 Tips to help you with the First Tier Tribunal process as a Parent.

- ❖ Keep your Decision Letter – you will need it to make the Appeal
- ❖ Make a note on the calendar about specific dates and timelines you have to remember
- ❖ If you need support, seek it early – there are often procedures that have to be followed
- ❖ Read each section of the Appeal Form before completing it, have a draft version if it helps you
- ❖ Always send copies of documents by post or email and keep your originals
- ❖ Try to stay organised with your paperwork – keep it all in one place like a box file for your hard copies or a saved folder in your emails inbox for items sent digitally, this way it will be easier to find it again if you should need it
- ❖ It's ok to not know what all the words, acronyms or phrases mean – SENDIAS have a First Tier Tribunal Jargon Buster to help if you don't recognise a term used
- ❖ If you think it appropriate, discuss the tribunal with your child, this is about them and their education
- ❖ To Google or find information on Social Media can sometimes cause more worry – ensure your research on topic is from reliable and recognised sources
- ❖ Try your best to stay calm and in control of the situation, remember you know your child best

FAQ – Frequently Asked Questions

Should I Appeal?

As a parent, you are the only one that can make this decision, it is important to recognise that you have the right to Appeal.

When can I Appeal?

You can appeal the LA decision as soon as you have the Decision Letter. The deadline for making appeals is two months from the date of the letter or one month from the date of the mediation certificate - whichever is later.

What happens if I miss the two month deadline?

If there are exceptional circumstance for missing the deadline. You can make a late appeal with an explanation submitted with the Appeal Form.

What's the timeline for making an Appeal?

From start to finish, the process of making an appeal can take up to five months depending on the type of case.

Do I send original documents?

No, don't send original documents, only send copies. Please make sure all documents are single sided, there is no need to send all LA emails and correspondence unless it is appropriate to your argument.

Useful Websites and Links for Parents



[HM Courts & Tribunals Service – How to Appeal a SEN decision](#)
[SEND37 - How to appeal an SEN decision \(publishing.service.gov.uk\)](#)

[HM Courts & Tribunal Service \(Short Videos\) You Tube](#)
[Special Educational Needs and Disability Tribunal - YouTube](#)

[IPSEA – Tribunal Updates for Parents](#)
[SEND Tribunal – Update for volunteers, parents and carers | \(IPSEA\) Independent Provider of Special Education Advice](#)

[IPSEA – Help with making an Appeal](#)
[Where can I get help with making an appeal? | \(IPSEA\) Independent Provider of Special Education Advice](#)

[Contact – Tribunal Appeals](#)
[Tribunal appeals | Contact](#)

[Council for Disabled Children – Guidance for support](#)
[Guidelines for parent carers looking for support with tribunals or disputes \(councilfordisabledchildren.org.uk\)](#)