

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Special Educational Needs

and your Child:

What happens if things go wrong?

Support for Disabled Children and Children with Special Educational Needs

Special Educational Needs and your Child:

What happens if things go wrong?

This factsheet should be read together with our factsheet entitled 'Special Educational Needs and your Child: An Introduction'.

If you do not agree with the LEA's decision regarding support for your child and you are unable to resolve the issue with it, you may be able to appeal to the Special Educational Needs and Disability section of the First Tier Tribunal (SEND). You have a right to appeal to SEND in the following circumstances:

- i. Where your child does not yet have a Statement of Special Educational Needs you can appeal against:
 - the LEA's refusal to assess; **or**
 - the LEA's refusal to make a Statement.

- ii When the LEA first finalises the Statement you can appeal against:
 - the contents of the first statement.

You may appeal against one or more of Parts 2, 3 and 4 of your child's statement if you are unhappy with their contents. Some parents are unhappy with the description of their child's needs in Part 2 of the statement. You may

also feel that the LEA is not providing the right resources to meet those needs. Finally, many parents disagree with the school named in Part 4 of the Statement. You may want your child to have a place in a special school but the LEA name a mainstream school. Alternatively you may want inclusive education for your child and the LEA has named a special school. Please note that you cannot appeal against the contents of Parts 5 and 6 of the Statement.

When your child has a Statement of Special Educational Needs you can appeal against:

- the LEA's refusal to reassess;
- the contents of a statement following a reassessment;
- the contents of a statement which has been amended without a reassessment;
- the LEA ceasing to maintain your child's statement;
- the LEA's refusal to change the name of the school (if you have requested a school which is of the same type to that already set out in your child's statement).

You will **not** be able to submit an appeal in the following circumstances:

- If the LEA fails to name an independent or non-maintained school following your request for a change of school when your child's statement is at least a year old;
- If you are unhappy with the way the LEA carried out the assessment process;
- If you do not agree with how the LEA is arranging to provide the help set out in your child's statement;
- If you are unhappy about the way the school is meeting your child's needs;
- If the LEA decides not to amend your child's statement following an annual review;

- If the LEA informs you that it is going to amend your child's existing statement but then fails to do so;
- If you are unhappy with Parts 5 and/or 6 of the statement (unless you want to argue that that something that has been included in these parts should instead be in parts 2 or 3 of the statement);
- Where you have missed the time limits for appeal;
- Where the LEA has issued a draft/proposed Statement but not a final version.

In these circumstances you may have to contact a solicitor to discuss what other action, such as judicial review proceedings, may be appropriate.

The Appeal Process

The Special Educational Needs and Disability section of the First Tier Tribunal (SEND) is an independent tribunal set up to consider parents' appeals against the decisions of LEAs where parents cannot reach an agreement with their LEA. SEND also considers parents' claims of disability discrimination both in schools and against LEAs in the education context.

The first step in an Appeal is to obtain the free 'How to Appeal' booklet from the Tribunal office which also contains the form which you need to lodge your appeal. You can request your free copy by contacting SEND (contact details at the back of this factsheet).

The Tribunal must receive your appeal within two months of the date of the relevant decision letter from the LEA which notifies you of your right to appeal. If the end of the two month period falls in August, you will have until the first working day in September. You may wish to get advice from one of the organisations listed in the end of this factsheet about filling in the form. You will have to state what type of appeal you are making and reasons for the appeal. It is now important to include as much information and supporting

evidence as possible when lodging your appeal. It is therefore recommended that you seek advice prior to lodging your appeal.

Your appeal form and the written evidence which accompanies it are very important. The Tribunal will decide the appeal on the evidence before it and it is therefore vital that you produce the best possible evidence you can in support of your case and against the LEA's view.

Your evidence should include reports from one or more professionals to back up your view. These may include an educational psychologist report, speech and language therapy report, medical advice etc. You may be able to rely on the reports produced when your child was assessed but if these reports support the LEA's view you may need to consider arranging for your own professional reports. Unfortunately this may be expensive. You may be eligible for public funding, called legal help, if you have a very low income (please contact the Community Legal Service for more information). You will need to instruct a solicitor with a Community Legal Service contract to access this funding. It is possible to get expert reports paid for from public funding.

If you cannot get public funding, some charities such as SCOPE and the National Autistic Society, may also provide assessments at a reasonable price. Other disability organisations and parent support groups may be able to suggest professionals who can assist you. Finally, IPSEA maintains a list of professional experts who assist parents on a voluntary basis (see contact details at the back of this factsheet for all of these organisations).

You should be aware that many professionals such as independent Educational Psychologists can have long waiting lists and so you may wish to enquire as to their availability before lodging your appeal.

As well as professional reports the following may be useful sources of evidence:

- Written statements from your child's teacher or SENCO;
- Written statements from the headteacher or SENCO at your preferred school (if appealing against Part 4);
- The school's OFSTED report and/or prospectus;
- School reports and Individual Education Plans;
- Extracts from or references to relevant research/publications/case law;
- A written (or audio) statement of your child's views;
- A diary/chronology of your child's progress.

Tip: If you are unhappy about the school the LEA has chosen for your child in Part 4 of the statement then you should consider carefully whether you should also appeal against Parts 2 and/or 3 of the statement as well. If you only appeal against Part 4 of your child's statement then the suitability of the school will be assessed by the Tribunal on the needs of your child as currently set out in Parts 2 and 3.

Stages of an Appeal

Once the Tribunal registers your appeal it will write to you setting out a number of deadlines and a provisional hearing date. In all cases it will inform you of the date by which the LEA will have to provide the Tribunal, and you, with a response to your appeal. Depending on the type of appeal it will also set out other deadlines which will need to be complied with.

The Tribunal will send you a form known as an SO1 form which you will need to complete and return by the deadline specified. Whilst the contents of this form can vary between appeals it generally requires information regarding who will be attending the hearing (including witnesses and representatives). The Tribunal may allow your child to attend part of the hearing if it considers

this appropriate, although you should inform the Tribunal in advance if you intend to bring your child. You should also ensure there is someone to look after your child as it is rare for a child to attend the whole hearing.

The Tribunal is also likely to ask you to set out any further evidence you wish to rely on and when you are likely to receive this. It is advisable to consider carefully the evidence you have already lodged together with the LEA's response to determine what (if any) further evidence you will need, particularly, in relation to challenging any points raised by the LEA.

If you are unable to make the provisional hearing date set by the Tribunal it is important to let the Tribunal know, in writing, as soon as possible explaining why you are unable to make the date set.

The Tribunal will then hold a case management hearing. This is usually done on the papers and generally neither you nor the LEA will have to attend. The purpose of this hearing is for a Tribunal judge to make directions as to the administration of the case. It will usually finalise the hearing date as well as set a deadline for lodging any further evidence.

It is very important to comply with such deadlines, as if you miss them you will need to apply to the Tribunal to allow you to lodge any additional documents. There is no guarantee the Tribunal will allow you to do this and there is the potential risk that the Tribunal could order you to pay some of the LEA's costs in such circumstances.

Witnesses at the Tribunal Hearing

Once you have lodged your appeal with the Tribunal it is important to ensure that you have witnesses who can attend the Tribunal to support you. Generally, you may bring up to three witnesses to the Tribunal hearing. The best witnesses will be professionally qualified and will have direct knowledge of your child, for example, an Educational Psychologist or your child's SENCO. Teachers are often good witnesses as they have got to know your child on a daily basis over a period of time. Teachers are also able to explain to the Tribunal what their school can offer your child.

The Hearing

The Tribunal is made up of three people. The chairperson is a lawyer and is now known as a Tribunal Judge. The other two members are people with knowledge and experience of special educational needs. The Tribunal is a legal process but it is intended to be reasonably informal. The hearings are usually held in Tribunal offices. The parties will sit round a table which is large enough to seat the three Tribunal members on one side and the parties, their representatives and witnesses on the other. If you are not represented, the Tribunal will try to make it easier for you to present your own case. If you have a representative, he/she will take responsibility for helping you to present your case.

The Tribunal will set out what it considers the relevant issues to be. The Tribunal will then give each side an opportunity to present its arguments on the issues identified.

Tips for parents and professional witnesses:

- Careful preparation is the key to success;
- Do not get angry or upset about incorrect statements made by the LEA officers and their experts;
- Confine your comments to matters that you have personal or professional experience of.

The Tribunal is interested to hear the parents' views and there should be ample opportunity for you to have your say.

You will get the Tribunal's decision in writing 2–3 weeks later. If you find that you have been unsuccessful, whether in whole or in part, you can seek further advice from the organisations listed at the back of this factsheet on whether it is possible to request a review of a decision or whether you should appeal to the Upper Tribunal.

You can only ask the Tribunal to review its decision if you think there is a technical legal problem with the decision or the way it was made. You cannot ask for a review simply because you are unhappy with the decision.

If you wish to appeal to the Upper Tribunal you will probably need to see a solicitor. You can only appeal on points of law, i.e. if you think the law was incorrectly interpreted by the Tribunal in its decision-making process. You will have 28 days from the date the decision is issued by the Tribunal to apply to SEND for permission to appeal. You must do this first. If you are refused permission you can then apply to the Upper Tribunal for permission to appeal. You have one month (which is not necessarily 28 days) from the date of SEND's decision refusing permission to appeal, in which to seek permission to appeal from the Upper Tribunal.

Other ways to resolve disagreement

You may feel that your concerns can be resolved without resorting to a Tribunal or you may find that your problems are ones which cannot be dealt with at a Tribunal. In these situations there are various other avenues available to you.

1. Contact the school

If you have any concerns about your child's special educational needs then it would be best to discuss them first with your child's teachers or SENCO. If you have a complaint against the school which cannot be resolved by discussion you may wish to investigate the school's complaints procedure.

2. Disagreement resolution

If your problems cannot be resolved through the normal complaints procedure then you can ask to use the statutory SEN disagreement resolution process where independent people will meet with you and the school/LEA to help prevent or resolve your dispute.

Tip: If you are in the process of trying to resolve your disagreement with the school or LEA, whether using the disagreement resolution service or otherwise, remember to bear in mind the two month time limit for appealing to a Tribunal. It is best to put in an appeal anyway if you cannot guarantee that your concerns will be resolved informally. You can always withdraw your appeal at a later stage.

3. Complaining to the Local Government Ombudsman

The Local Government Ombudsman (LGO) investigates complaints of injustice about the way local authorities have acted. The LGO looks at whether a local authority has acted within the law and according to accepted

standards. The LGO **cannot** investigate action concerning the teaching, conduct, curriculum, internal organisation, management or discipline in a school.

You should try to submit a complaint within one year and you must write to your local authority first to give it the opportunity to resolve matters before complaining to the LGO.

For more information about complaining to the LGO please ask for a copy of our factsheet entitled 'How and when to complain to the Secretary of State for Education and the Local Government Ombudsman'. Alternatively, the LGO produces a number of factsheets covering different types of educational complaints. These can be accessed at: www.lgo.org.uk/publications/factsheets/ or hard copies can be obtained by calling the LGO using the contact details at the back of this factsheet.

4. Complaining to the Secretary of State for Education

You are entitled to complain to the Secretary of State as a last resort if you think that the LEA or school governors have acted 'unreasonably' or that they have failed in their duties under the Education Acts. This can be a slow process and there is no guarantee that any action will be taken. Sometimes the threat of making the complaint will cause the LEA to try to resolve matters.

For more information about complaining to the Secretary of State, please ask for a copy of our factsheet entitled 'How and when to complain to the Secretary of State for Education and the Local Government Ombudsman'.

5. Legal Action

If you feel that the above procedures are not appropriate or you have already made an official complaint and nothing was done, you may wish to contact a specialist solicitor for advice about bringing judicial review proceedings. Judicial review is the process by which the High Court supervises the actions

of public bodies. You may be able to apply for judicial review where the LEA has acted outside its powers, for example, by failing to comply with a particular duty under the Education Act 1996.

An application for judicial review should be brought as soon as possible and no later than three months from the LEA's decision or action you are unhappy about.

You, or in certain circumstances your child, may be eligible for public funding for judicial review proceedings and we recommend you contact the organisations listed below or the Community Legal Service for details of solicitors who may be able to assist you.

Disability Discrimination

If you think that your child has experienced disability discrimination in school or would like further information on this area please ask for a copy of our factsheet 'Disability Discrimination in Schools'.

Other organisations which offer advice/ representation on aspects of education law:

Advisory Centre for Education (ACE)

1C Aberdeen Studios
22 Highbury Grove
London N5 2DQ

Advice line: **0800 800 5793**

Website: **www.ace-ed.org.uk**

Provides advice and support for parents on all aspects of education.

The Children's Legal Centre

University of Essex
Wivenhoe Park
Colchester
Essex CO4 3SQ

National Education Line via Community Legal Advice: **0845 345 4345**

E-mail: **clc@essex.ac.uk**

Community Legal Service

85 Gray's Inn Rd
London WC1X 8TX

Telephone: **0845 345 4 345**

Website: **www.justask.org.uk**

The CLS can give contact details of solicitors and other organisations who can advise and assist you, subject to eligibility, under the free Legal Help Scheme.

The Education Law Association

Executive Officer
33 College Road
Reading RG61QE

Tel/Fax: **01189 669866**

E-mail: **secretary@educationlawassociation.org.uk**

Provides details of experienced solicitors across the country who are willing to take on legal aid and privately funded cases.

IPSEA - Independent Panel for Special Education Advice

6 Carlow Mews
Woodbridge
Suffolk IP12 1EA

Telephone: **0800 018 4016**

Website: **www.ipsea.org.uk**

Offers a helpline service offering advice on special educational needs and a SENDIST advice and representation service.

The Law Society

The Law Society's Hall
113 Chancery Lane
London WC2A 1PL

Telephone: **020 7242 1222** (general enquiries)

Advice Line: **0870 606 6575** (choosing and using solicitors)

Website: **www.lawsociety.org.uk**

Email: **info.services@lawsociety.org.uk**

Provides details of solicitors who can advise on all aspects of education law.

Levenes Solicitors

Education and Disability Department
Ashley House
235–239 High Road
Wood Green
London N22 8HF

Tel: **0800 11 88 99**

E-mail: **info@levenes.co.uk**

Website: **www.levenes.co.uk**

A private firm of solicitors specialising in all areas of Education Law.

Local Government Ombudsman

Advice Line: **0845 602 1983**

Website: **www.lgo.org.uk**

Call the advice line or visit the website to find out who your LGO is and to obtain a copy of the booklet 'Complaint about the Council' which includes the form you need to make a complaint.

National Autistic Society

393 City Road

London EC1V 1NG

Help line: **0870 600 8585**

Website: **www.nas.org.uk**

SCOPE

PO Box 833

Milton Keynes MK12 5NY

Advice line: **0808 800 3333**

Email: **cphelpline@scope.org.uk**

Website: **www.scope.org.uk**

Provide advice and assistance to parents of children with cerebral palsy.

Secretary of State for Education and Skills

If you wish to make a complaint to the Secretary of State for Education and Skills please write to:

Secretary of State for Education and Skills
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

The Special Educational Needs and Disability (SEND)

SEN helpline: **01325 392 555**

Website: **www.sendist.gov.uk**

SEND is an independent tribunal which is now part of the Unified First Tier Tribunal. It hears and decides parents' appeals against the decisions of LEAs about children's special educational needs. You should contact them for a copy of their booklet entitled 'How to Appeal' which includes the form you need to make an appeal.

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

This factsheet was updated by:



London and Birmingham based solicitors specialising in Personal Injury, Employment, Education & Disability and Crime.

<http://www.levenes.co.uk/>

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For further advice on these matters please contact:

Disability Law Service

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: **advice@dls.org.uk**

Website: **www.dls.org.uk**

Or write to us at: 39 – 45 Cavell Street, London E1 2BP

Community
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