

Script for Video: Preparing an appeal regarding a refusal to do an EHC needs assessment

Title slide

This recording is for parents and carers who have decided they want to appeal to the SEND Tribunal against their local authority's refusal to do an Education, Health and Care (or EHC) needs assessment for their child. It aims to help you prepare your appeal paperwork.

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This recording is divided into sections and will explore:

- Who can appeal to the SEND tribunal
- We'll walk you through filling in each section of the appeal form
- We'll look in detail at key points to help you prepare your reasons for appeal (in section 2 of the appeal form) and prepare any evidence to support your reasons
- We'll explain how to lodge your appeal
- And what to expect from the tribunal after you have lodged your appeal

Slide 3

You may only have questions about one particular section of the appeal form.

We've timestamped the different sections in the video, so for example, if you want help just with preparing your reasons for appeal, hover over the timeline at the bottom of the video and scroll the cursor to the 'chapter' for section two and the video will start at that point. You can do this for all of the sections in the video.



Slide 4

If you are still considering whether to lodge an appeal, you may like to watch this separate video which explains your options.

Slide 5

For a refusal to assess appeal, you must first consider mediation.

Mediation is an informal way of settling disagreement with the local authority and/or the health commissioner.

You don't have to go to a mediation meeting – this is voluntary – but you must contact the service providing SEND mediation and consider it.

In our county of Suffolk the mediation service is provided by Anglia Care Trust and their details are on screen, but every county will have their own mediation service.

If you are watching this video from another county, your local SEND information, advice and support service will be able to give you their contact details.

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If you have had lots of discussions already with the LA, you may feel that a mediation meeting will not be so helpful and you may want to ask to get your mediation certificate straight away.

However, if you have not had a proper talk with the LA about why they refused assessment, mediation may help as this gives you the chance to explain your points, give more context and get a better understanding of the local authority decision which may help you build your case to appeal.

You may also consider a mediation meeting to give yourself more time to appeal, if it extends your appeal deadline.


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If you choose to go to a mediation meeting, we have a separate video which can help you prepare:

[Preparing for a mediation meeting regarding a LA refusal to do an EHC needs assessment - YouTube](#)

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You can appeal to the SEND Tribunal either:



Within 2 months of the date on the decision letter you received from the LA which gives you the right to appeal

Or

Within one month of the date of the mediation certificate, whichever is later.

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To appeal a refusal to assess decision, you will need to download the Tribunal appeal form **SEND 35a**:

[SEND35A - Application for appeal - Refusal to secure an EHC Needs Assessment \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612343/SEND35A_-_Application_for_appeal_-_Refusal_to_secure_an_EHC_Needs_Assessment.pdf)

Not SEND 35 which is the form for appealing other EHC decisions.

If you google form SEND 35a it should take you directly to the webpage you can see on screen and then you can click on the document link to download the form. Then save it to your computer.

Slide 10

We're going to look at key points from the introductory notes and section one of the appeal form, based on questions families often ask our service.

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Firstly, all refusal to assess appeals will be decided on the written information sent to the tribunal from the young person or parent and the LA.

This means you do not have to go to a face-to-face hearing. However, you or the LA can request an oral hearing if you give clear reasons.


You will have the opportunity to say whether you are happy with the appeal being decided on written evidence in section 4 of the appeal form.

Slide 12

The introductory notes explain who can appeal to the SEND Tribunal.

If you are a parent or someone with parental responsibility or someone who cares for a child, you can appeal if your child is under the age of 16 or until the last Friday in June of the school year in which they turn 16.

A young person between the ages of 16 and 25 years can make an appeal.



The law presumes that a young person has the mental capacity to make an appeal themselves. This will often be with the support of a parent, a family member or other advocate which we'll explain in a minute.

If they don't have the mental capacity, then an Alternative Person, acting in their best interests can make the appeal. This is often the young person's parents, a family member or a member of the local authority social care team. Or it could be a Deputy appointed by the Court of Protection. The tribunal will still want to know the young person's views.

Slide 13

So who or what is an advocate?

The introductory notes explain that an advocate is someone who knows you, who understands what you think about the issues in the appeal and so can speak on your behalf.

For a young person, they can be a parent, family member, friend or paid advocate.

If a parent is disabled, they may also be able to have an advocate. An advocate is not someone who can give advice on the issues in the appeal.

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By contrast a representative *can* give you advice on the issues in the appeal, they can prepare paperwork on your behalf and may represent you if there is an oral hearing.

They could be a volunteer from a charity, a paid representative, a solicitor or a barrister.


Most appeals are brought to the Tribunal by a parent or carer or young person 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.

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Many families send in their appeal electronically by email. If this would be difficult for you, you can print the appeal form out and fill it in by hand, using block capitals. You can then post the form to the address found in section 10 of the appeal form.

You don't have to use block capitals if you are filling in the form electronically, to email it to the SEND Tribunal.



The tribunal prefers to contact you by email, phone or text. So it is very important to let the tribunal know if your email or phone number changes after you lodge your appeal.

If you move to another area with a different local authority, the SEND Tribunal will need to contact the new local authority to tell them about the appeal. Your appeal will be then be against them, unless there are good reasons why they should not take over the appeal.

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In this first section, you need to say who this appeal is about by ticking whether this is a child under 16 years or a young person.

Then fill in the name, gender and date of birth of the child or young person.

Slide 17

We're moving on to section two which is the heart of the appeal: the reasons why you disagree with the local authority decision.

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The SEND tribunal will use the legal test for an EHC needs assessment to make its decision. So let's just remind ourselves of that test.

Slide 19

The law states that a local authority must secure an EHC needs assessment for the child or young person if, after having due regard to any views expressed and evidence submitted, the authority is of the opinion that:

‘the child or young person has or may have special educational needs, and


it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.’

(Children and Families Act 2014, 36 (8) (a) and (b))

In other words, if a child may have SEN which may need support which goes beyond the resources routinely available to a setting to provide SEN support.

Slide 20

So in line with this test, the first thing the Tribunal needs to find out is if your child may have special educational needs.



The first question gives you the chance to explain what kind of difficulties with learning your child has. If you have a copy of the information you sent to the LA when you prepared the Family Advice Form requesting an EHC needs assessment, this will help you.

Slide 21

If you went to a mediation meeting, you may already have prepared written evidence and points which you can send.

Written evidence may be available from:

Teachers – it helps to ask them to be precise and to quantify exactly what additional support your child needs to help them to learn

Or a health professional like an occupational therapist or a speech and language therapist, perhaps a paediatrician or clinical psychologist.

Remember however, that a child doesn't need a diagnosis to have a special educational need, so a diagnosis alone is unlikely to be enough evidence of SEN.

Written evidence may be available from other people involved with your child like a social worker, or a youth worker or careers adviser.

You may have information from voluntary groups relating to a learning difficulty or disability which your child may have.

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Written evidence may also be available from:

School reports, including results of national tests and assessments

Your child's school or college's own assessments and review reports.


You may have details of adjustments or access arrangements made for internal or external exams which would demonstrate your child's special educational needs.

Written evidence may also come from home-school diaries or details of suspensions (previously called fixed term exclusions).

Slide 23

It's important to label the particular sections of evidence that you are sending in which relate to the points you are making.

Families often underline particular sections and then label these sections using numbers of letters like you can see in the example on screen.



Then in your reasons, you can link your point to that section.

In this example, you would write 'please see underlined section A of page 1 of the report by (and name whoever has written that report) and give the date of that report.

This will make it much easier for a tribunal panel to readily identify the key points about your child's needs which they need to consider in their decision-making.

Slide 24

You may also have your own evidence to share in writing.

Consider:

Has a younger brother or sister overtaken your child in their learning and understanding and progress at school?

Is your child anxious about going to school – how is this demonstrated? What are they telling you?

Do you get bed-wetting, particularly in term time?

Has your child started to school -refuse?

You may have evidence from your child or young person themselves, which could perhaps be written by a key person working with them to gain their views and feelings.

Slide 25

The second box of section two also refers to the first part of the legal test for an EHC needs assessment – whether your child may have special educational needs.

Here you are asked to describe if your child has any special educational needs which you feel have not yet been fully identified.

Slide 26

A learning setting and home are very different environments, and children and young people with SEN can present differently in both.

Perhaps your child is expressing or showing difficulties or worries which have not been so obvious in the learning setting and which may indicate further special educational needs.

Do quote your child's words to help the Tribunal appreciate your child or young person's feelings.



Slide 27

Remember that SEN covers a wide range of needs.

A child or young person can be progressing academically and still have difficulties in other areas, like communication and interaction.

Do you believe that there are gaps in knowledge about your child's needs and that a full assessment is needed to find out what your child's difficulties are and what help will address them?

If so, give the Tribunal an idea of what these gaps might be and what is your child telling you?

Slide 28

Or maybe your child is waiting for a specialist assessment.

Tell the Tribunal what kind of assessment this is and summarise the difficulties which have led to this referral.

Has there been a recent assessment but you have not yet received the report? Tell the tribunal when you expect to receive this additional evidence.

Remember it is learning needs which trigger an EHC needs assessment. However, health and social care needs are important to include if they are making it more difficult for your child to learn or to access learning.

Slide 29


The third box in section two refers to the second part of the legal test – whether your child may need support in accordance with an EHC plan, in other words support which goes beyond the resources routinely available to a setting through SEN support.

Remember the legal test says 'may' – you don't have to demonstrate that your child will definitely need that support, only that there is evidence to suggest that they may do.

So let's consider what information might be important here.

Slide 30

You may feel that your child's school or college or other setting has already provided all the help that could be expected through SEN support but your child has still struggled to make progress. Does the setting feel that they have exhausted all strategies of support?



Has specialist advice been sought over a period of time and this has had little impact?

Your child's setting should be able to provide evidence for you of the support they have offered and the impact it has had so far.

Always bear in mind what reasons the LA have given in their letter refusing to do an EHC needs assessment. For example, the LA may refuse on the grounds that they feel that the child would benefit from further support from a particular specialist service.

Sometimes parents have told us that the school has helpfully made a referral to an outside service, but this is not available for one or more terms and in the meantime their child continues to struggle. If this is the case for you, especially if things have reached a crisis point, let the Tribunal know and if you feel that you cannot wait for this additional support to be offered, explain your reasons why.

Slide 31

The SEND Code of Practice says that a local authority should look for evidence of a child's progress when deciding whether to make an EHC needs assessment.

You may want to include examples of your child's school or college work if this demonstrates the lack of progress despite support.

If there has been little progress over a period of time, it sometimes makes it clearer to show this visually by a chart or a graph.

But don't worry if this would be difficult for you to create.

You may also be able to show uneven achievement between one particular subject or skill and another.


Especially if this is below what your child is generally capable of.

Slide 32

You may believe that your child has made progress but only with a great deal of extra support which is not sustainable in the future.

This support may be over and above what would normally be provided without an EHC plan.

Or perhaps your child will be transitioning to college which cannot provide all the interventions needed without getting extra help from the local authority.



Case law has established that a local authority must consider not only the current situation for a child or young person but also future changes such as an upcoming change of school when they receive a request for an EHC needs assessment.

Slide 33

Think about inclusion.

Is there evidence that your child is struggling in a mainstream class? For example, has your child been taught out of the class with dedicated adult support for long periods?

Or have they been on a part-time timetable for a long period or at several different points in the school year?

Slide 34

Perhaps you believe that it is already clear that more specialist help is needed for your child to access and progress with their learning.

Have there been any recent assessments which recommend support which a mainstream setting would be unable to provide?

For example, perhaps a report recommends that your child would benefit from being taught in small groups or with a high teacher to pupil ratio or in an environment which has low sensory stimuli?

Slide 35

You are not limited to writing in the appeal form boxes.

You can write 'please see attached sheet' or sheets on the appeal form and attach one or more extra sheets to the form.

However, it is important to:

- mark the sheet or sheets 'Reasons for my appeal'
- write your child's name and date of birth on every sheet you attach
- and to number each one. This will help the tribunal panel access your information more readily if any sheets become unattached or dislodged whilst they are being read.

Slide 36

Keep your points brief and clear.



Do:

Separate your points into paragraphs or bullet points.

and number your paragraphs or organise them under headings.

Slide 37

Don't:

Get bogged down in history.

Let the evidence speak for itself and clearly refer to particular sections of your evidence, in the way we recommended earlier.

Slide 38

Try and get written evidence as soon as possible.

It is best to send in all your written evidence with your appeal form if you can, as this means that you have the main substance of your case set out with supporting evidence right from the start. Note that the tribunal prefers your evidence to be copied on single sheets not double-sided.

If you think you need to send in evidence later, (perhaps for example, a particular assessment of your child is due to happen soon), tell the SEND tribunal what you expect to obtain and when.

When you have registered your appeal, you will be given a timeline which includes a deadline for submitting extra evidence.

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Now let's move on to section three.

Slide 40

To fill in this section you will need the letter the local authority sent you saying that they did not agree to do an EHC needs assessment.

In the first box write the name of the local authority who refused your request as the Tribunal will need to contact them and get information from them.

In the second box enter the date on the refusal letter, not the date you received it.

If there was a long delay in you receiving the letter, and this leads to you needing an extension in the appeal timeframe, you will be able to give your reasons for needing more time in the box below.



Slide 41

If you can't find the refusal letter, you can request a copy.

If you intend to send your appeal via email, ask for an electronic copy to be sent to you.

You need the letter as you must send it with your appeal. The letter gives you the legal right to appeal to the SEND tribunal.

In our county of Suffolk, the Family Services team are responsible for EHC processes and you can email the team in your area to request a copy.

If you are watching this video from another county, the team responsible for EHC processes may have a completely different name. Contact your local SEND, Information, Advice and Support Service if you are not sure who to contact.

Slide 42

This part only needs to be filled in if you are lodging your appeal later than 2 months from the date on the local authority's decision letter.

Or, later than one month of the date of your mediation certificate.

If this is the case for you, tick the box and give your reasons explaining why your appeal is late and why you think the appeal would succeed given more time.

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Reasons for a late appeal might be because:

You didn't understand the process as you have a learning difficulty

Or maybe the letter from the local authority never arrived in the post or was very delayed


Or perhaps you were ill or a family member was seriously ill.

If you have any medical evidence for this, send a copy with your appeal.

Slide 44

This next part of section three is only if you don't have a mediation certificate.

If this is the case for you, tick the box and give your reasons explaining why you don't have a certificate.



If you don't give your reasons, for either a delayed appeal or not having a mediation certificate, the papers will be returned to you without begin registered or being seen by a Tribunal judge and this will delay your appeal.

Slide 45

Moving on to section four of the appeal form.

Slide 46

Refusal to assess appeals are usually dealt with on written evidence. This means that the parent or young person doesn't physically attend a hearing and the judge makes a decision based on the paperwork evidence sent in by the family and the LA.

Many parents and young people are happy with this and tick this box.

If you don't tick the box, you will automatically have an oral in-person hearing.

Slide 47

This next part of section four is only for families who already have an existing appeal of claim lodged with the SEND tribunal.

If you currently have an appeal being dealt with by the tribunal for the child or young person in this appeal, or for one of their siblings, tick yes and write your appeal number in the box.

If you don't, tick no.

Slide 48

If you currently have a disability discrimination claim registered with the tribunal for the child or young person in this appeal, tick yes and give the date of the claim and the claim number in the boxes.

If you don't, tick no.

Slide 49

If you have a different appeal or claim registered with the tribunal and you would like it heard at the same time as this appeal, tick yes.

Otherwise, tick no.



Slide 50

We're now going to look at section five of the form which is where you make clear who is making the appeal.

Slide 51

Here you must tick one box only.

Tick if you are making the appeal as a parent or carer or someone with parental responsibility for a child under 16 years of age.

Remember you can still make an appeal on behalf of a 16-year-old if they have not past the last Friday in June of the school year in which they turn 16.

Tick if you are a young person making the appeal between the ages of 16 and 25 years.

Often a young person will ask for their parent's help and support with their appeal.

Or tick the third box if you are an Alternative Person making the appeal on behalf of a young person who does not have the mental capacity to make the appeal themselves.

Often this is the parent.

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In section five these two parts A and B are in case there are two parents or carers or people with parental responsibility making this appeal.

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If there are two people, you need to decide who will receive the information from the Tribunal.

This will be the first person making the appeal.

In section A, Fill in their contact details and their relationship to the child in the appeal.

Remember to give an email address if you have one as the tribunal will use email to send you information.

If you would find this difficult, use the box to say that you would like to receive information by post.



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It is absolutely fine for you to fill in only section A if there is just one person making the appeal.

In which case, part B blank.

Slide 55

We're moving on to section six which is about any other people involved in this appeal who are not listed in section five.

Slide 56

Does any other person or organisation share parental responsibility for the child in this appeal?

Or has someone been appointed as a Deputy by the court of protection for a young person.?

If yes, give their name and contact details here and confirm that you have told them about this appeal.

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However, if you believe they should not receive details of the appeal, you can explain why in the second box.

If this does not apply to you, leave these first two boxes of section 6 blank.

Only use the third box to give details of any order which a court or tribunal has made about the child or young person in this appeal, including the family court.

If this does not apply to you leave this blank.


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This next part of section six is only if you are a young person making this appeal and you have an advocate

Or if you are a disabled parent who may also have an advocate.

Slide 59

Remember the introductory notes explained that an advocate is someone who knows you, who understands what you think about the issues in the appeal and so can speak on your behalf.



For a young person, they can be a parent, family member, friend or paid advocate.

If you have an advocate, give their contact details here and the relationship to you (for example, is your advocate a parent or a friend?) Remember to include their email address.

If you don't have an advocate, leave this part blank.

Slide 60

This part of section six is only if you have a representative. Most parents do not have one.

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A representative is someone who will give you advice on the issues in the appeal, prepare paperwork on your behalf and may represent you if you have asked for an oral or face to face hearing. They could be a volunteer from a charity, a paid representative, a solicitor or a barrister.

Most appeals are made to the tribunal without a representative.

Remember, refusal to assess appeals are mostly decided on the paper evidence without a face-to-face hearing. If you feel that you need more support with your paperwork, you can contact our SENDIAS service or IPSEA for free, confidential and impartial advice.

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if you do have a representative, this is where you can give their contact details.

If you don't have a representative, leave this part blank.

Slide 63

The tribunal can only send papers and information to one of the people named on the appeal form. Often this is the person named in part A of section five.

But if you have a representative then the papers will automatically be sent to them unless you say otherwise here.

You must let the Tribunal know in writing if you decide to stop using your representative or if the contact details of your representative change.



Slide 64

So just to be clear....

If you don't have either a representative or an advocate, the tribunal will send the papers to the person named in part A of section five (the first person making the appeal).

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We're going to look at section seven now which is really only for those who have requested a face-to-face hearing.

If you have ticked that you are happy for the decision to be made on paper, then leave section seven blank and go straight to section eight.

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If you are requesting a face-to-face hearing and you have some additional needs, tick yes and use the box to describe your needs and what will help you.

For example, you may like to ask for a hearing loop or disabled access or you may want the panel to know that you have high anxiety or dyslexia and would like more time to process questions and information.

Slide 67

Question two is only if you are requesting a face-to-face hearing and you have a hearing impairment or English is not your first language.

Tick if you would like a signer or interpreter and use the boxes to tell the tribunal what language or dialect would help you.

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If you are requesting a face-to-face hearing but you do not need any adjustments or language support, tick no for both questions.

Slide 69

Moving on to section eight which has an important checklist for you to make sure that you are sending in all the right information to the tribunal.



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So when you have finished filling in your form, do not email or post it until you have ticked that you have included:

- The refusal letter which gives you the right to appeal
- A copy of the signed mediation certificate
- Your reasons for making the appeal and any evidence you are sending in to support this.
- And that you have signed and dated the form.

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Section nine is for your signature and parents and carers do contact our service with questions about this.

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It is fine for there to be just one parent or carer or young person making the appeal and signing it on the left side.

If you are sending the appeal via email, it is also fine to type your name in the signature box.

Many people forget to sign the form or hadn't realised they can still type their signature for an emailed form.

If you do not sign the form, it will be sent back to you without the appeal being registered and you will need to re-send your signed form, delaying your appeal.

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If you have a representative, you need to show who they are representing – a parent or a young person.


If you don't have a representative (and remember most people don't), just leave this blank.

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We're going to look at sections ten and eleven now which are concerned with lodging your appeal.

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Once complete, the appeal form and your evidence can either be posted or emailed to the tribunal services.



If you are near the end of your appeal window, then emailing is better to avoid the appeal being late.

The postal and email address to use are in section ten of the appeal form.

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Include a list of all the documents you are sending in section eleven of the form

Make sure that your child's name is on every sheet of evidence.

If a document were to get unattached, this will make it much easier for the tribunal services to ensure that all your information is intact.

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If you choose to email in your appeal, keep an eye on the file size to make sure that your email gets through.

You should get an auto acknowledgement within five minutes. If you don't, firstly check you have used the correct email address.

Then check that you haven't received an email rejection because it was too big. This may have gone to your email junk.

If you have lots of evidence to send and it's clear that the file size of your email will be too big, you can attach your documents to separate emails.

If you do this, make sure that your child's name and date of birth are in the subject heading for each email and number the email in the header too as in the example on screen.

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If you are posting your appeal, we recommend using Recorded Delivery so that you have a receipt and can track it.

Don't send original documents, send photocopies or scans.

The tribunal also likes information to be single-sided.

Keep a copy of everything you send to the tribunal, including a copy of the appeal form.

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So what can you expect next from the SEND tribunal?



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If you provided an email address on your appeal form, then all contact from the SEND tribunal will be by email regardless of how you sent in your appeal form.

When you receive the automatic email response from the Tribunal, check the information carefully. The tribunal will tell you when to expect their next response.

This will be an emailed registration letter.

When you receive the Tribunal registration letter, this will also be when the local authority knows that an appeal has been lodged against their decision.

Remember you can let the tribunal know if accessing email information is difficult for you and explain on your appeal form what would be the best method for them to contact you.

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In their registration letter the SEND tribunal will tell you the following important dates:

- when the LA are required to respond to your appeal
- the deadline for you to send in any further evidence
- and tell you the date the appeal will be considered (or the hearing date if an oral hearing was requested.)

Take careful note of this timetable of dates – enter the dates on a family or phone calendar or stick them on your fridge – somewhere you can easily see and refer to.

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The SEND tribunal should also send you a case review form.

This is a new form to help with case management by getting an update on the case and to see if there has been any progress on agreeing issues that were in dispute ahead of the hearing.

This is mostly used in appeals about the contents of an EHC plan rather than refusal to assess appeals.

The tribunal will tell you if you need to use this form which would be completed by the final evidence deadline.



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You should also receive a Request for Change Form which looks like this.

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You can use this form to:

- Request a deadline is extended
- Ask the tribunal to make an order for example, if you are having difficulty getting important information which is relevant to your case, you can ask the Tribunal to make a direction to have this information released
- Or change any information you previously submitted (for example, if you have requested an oral hearing and you want to bring another witness.)

Before submitting a Request for Change form, you must seek the local authority's response and their response should be included in the Request for Change form.

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Once your appeal is registered any time you contact the SEND tribunal you will need to state in your communication:

- the date your appeal will be considered/or heard if you asked for an oral hearing;
- your appeal number;
- and your child's surname.

If you are emailing, type these 3 things in the email subject header, **in that order**.

You will need to send copies to the local authority of anything else you send to the tribunal after first registering your appeal.

The LA must do the same for you so that everyone has all the information that is sent to the tribunal.

Slide 86

Let's just finish with a couple of frequently asked questions.

Families often ask our SENDIAS service how long it takes before their appeal is considered or heard.

From start to finish, the process of making an appeal about a refusal to assess decision should take approximately 12 – 14 weeks.

Parents are often worried that the process may cost them money.



It is free for parents and carers to lodge an appeal.

A parent could choose to pay to instruct a solicitor. However, most parents bring appeals without any legal representation and then the whole process is free.

Remember you can gain information, advice and support from our SENDIAS service.

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And remember there is further appeals information and videos on our Suffolk SENDIASS website and YouTube channel.

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This video was made by Suffolk SENDIASS but every county will have an impartial and confidential SEND Information, Advice and Support service.