

Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

Disability Discrimination in Schools

How to make a claim

A guide for parents

Address:

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This document is also available in Welsh. Please contact the Tribunal for a Welsh version of this document.

About this guide

The aim of this guide is to help you through the claims process with the Special Educational Needs Tribunal for Wales (SENTW).

This guide explains what a claim for disability discrimination involves. It describes each of the steps in the process. Staff who process the claims through the tribunal office are called tribunal clerks. They will handle your letters, telephone calls and queries about the administration of your claim. **They cannot give legal advice.**

This guide deals with how to make a claim. It cannot tell you whether you have a good chance of success. Tribunal clerks will be happy to answer queries about the administration of your claim as it proceeds but they cannot give you an opinion about whether you are likely to win or lose, or whether you should take a particular action or step.

Who this guide is for

This guide is for parents who want to make a claim to SENTW.

This guide may also be helpful to children who wish to make their own claim and to their case friend if they have one.

If you would like to find out more about how children can make their own claim, please ask us for a copy of our **Information Pack and Forms for Children, Parents and Case Friends.**

This guide refers to the claim form, which you will need to complete if you want to make a claim to the tribunal. The form is available on our website or as a printed copy on request.

About SENTW

SENTW is a Tribunal. At SENTW we hear and make decisions about claims against Welsh schools and Local Authorities where there has been disability discrimination in a child's education. SENTW is independent of government and Local Authorities and our decisions are legally binding.

Language Preference

SENTW welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English. You may submit forms, documents, and make written representations to SENTW in Welsh or English. Can I get help if I decide to make a claim?

You may be entitled to assistance in preparing your claim. The Equality Advisory and Support Service (EASS) can provide expert information, advice and support on discrimination, and whether public funding may be available.

Telephone: 0800 444 205

Website: www.equalityadvisoryservice.com

Post: FREEPOST, Equality Advisory Support Service, FPN4431

The Law Society or your local Citizens Advice Bureau may be able to provide the names of solicitors who are experienced in these matters.

Overriding Objective and Obligation to Co-operate

The Tribunal's overriding objective is to deal with cases fairly and justly. It is the Tribunal's expectation that parents, representatives, Local Authority officers and responsible bodies, will help further the overriding objective by co-operating with each other and the Tribunal for the purposes of progressing the appeal or the claim.

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Step 1 - deciding whether to make a claim

What is a disability?

The Equality Act 2010 says that disability is a physical or mental impairment which has a substantial (more than minor or trivial) and long-term adverse effect (to last for at least a year or the rest of their life) on a person's ability to carry out normal day-to-day activities.

- Wearing glasses does not constitute a disability if that is the only difficulty. Conditions that happen regularly or are only temporary, such as hay fever or broken bones, are excluded as are addiction to alcohol, tobacco and drugs.

What aspects of Education are covered by the Equality Act?

The Act makes it unlawful to discriminate, harass or victimise a person on grounds of disability in relation to the following areas of school life:

Admissions

This covers:

- arrangements that are made for deciding who is offered admission as a pupil,
- the terms on which an offer is made to a pupil,
- not admitting a person as a pupil.

Education and access to any benefit, service and facility

This covers all aspects of school life, including:

- the way education is provided,
- the way that pupils are provided with access to any benefit, facility or service in school,
- not providing education for a pupil,
- not providing a pupil with access to a benefit, facility or service in school,
- by subjecting a pupil to any other detriment.

The law applies equally to what happens at break and lunch-times as well as to what happens during lessons and covers school related activities such as school clubs, after school clubs, sports activities and school trips.

Exclusions

This covers:

- permanent or fixed term exclusions,
- lunch time exclusions

What is Disability Discrimination?

Disability discrimination occurs when a person receives worse (less favourable or unfavourable) treatment than another person because of a disability.

Disability discrimination can also occur when a rule or policy or way of doing things has been put in place which disadvantages a particular group of disabled pupils when compared with non disabled pupils and a disabled person is disadvantaged as a result.

What are the types of Discrimination?

The Equality Act 2010 means that people who have or have had a disability are protected against different types of discrimination. These are:

- direct discrimination;
- indirect discrimination;
- discrimination arising from disability;
- failure to provide a reasonable adjustment for a disabled child;
- harassment; or
- victimisation.

Direct discrimination, this occurs when a pupil receives worse (less favourable) treatment than another pupil because of a disability. Direct disability discrimination can also occur where a pupil is treated less favourably because of their association with a disabled pupil or where it is mistakenly thought that they have a disability.

Indirect discrimination, this occurs when a rule, policy or practice applies to all pupils / a particular pupil group, but has the effect of putting pupils with a particular disability at a disadvantage compared with non disabled pupils and the rule, policy or practice cannot be justified.

Discrimination arising from disability, this occurs when a disabled pupil is treated unfavourably because of a reason related to their disability and the unfair treatment cannot be justified. And, it cannot be shown that the School or Local Authority did not know about the pupil's disability and could not reasonably have been expected to know this.

Failure to provide a reasonable adjustment for a disabled child, the school has a duty to take reasonable steps to avoid disadvantage experienced by disabled pupils. This can require steps to be taken in advance of the pupil attending the school. Discrimination occurs when a school has not complied with its duty to take positive steps to ensure that a disabled pupil can fully participate in the education and other services which the school provides.

The school's duty to make reasonable adjustments includes a requirement to provide auxiliary aids and services, such as specialised computer equipment, adapted desks or speech and language therapy. It does not require a school to remove or alter a physical feature. An auxiliary aids or service is anything which provides additional support or assistance to a disabled person.

Disability related harassment; this occurs where a pupil receives unwanted behaviour related to a disability which has the purpose or effect of violating a person's dignity or which is hostile, degrading, humiliating or offensive to the pupil.

Disability related victimisation; this occurs when a pupil is treated less favourably because they are taking / have taken or might be taking action in good faith under the Equality Act or because they are supporting such a person.

When can discrimination be justified?

Even though your child may have been treated unfavourably or has been placed at a disadvantage, the discrimination may not be unlawful if the school or Local Authority can show that was justified.

In cases of indirect discrimination and discrimination arising from disability, justified means being able to show that there was lawful and genuine reason for the treatment and that it was a fair, balanced and reasonable response.

What about the duty to make reasonable adjustments?

Schools and Local Authorities must take reasonable steps to make sure that disabled pupils, including children who are not yet at school and in some cases former pupils, are not put at a **substantial disadvantage** compared with a non-disabled pupil.

A reasonable step for example may be amending a policy or changing the way things are done.

Schools do not have to alter buildings. This is because schools and Local Authorities have a duty under the Equality Act 2010 to improve access to buildings over time.

Can a child without a disability be discriminated against?

The Equality Act means that people without a disability are protected against certain types of unlawful conduct, these are:

- Direct discrimination based on association, this occurs when a pupil is treated less favourably because of their association with another person who does have a disability.
- Direct discrimination based on perception, this occurs when a pupil is treated less favourably because it has been mistakenly thought that they have a disability.
- Disability related harassment; this occurs where a pupil receives unwanted behaviour related to a disability which has the purpose or effect of violating a person's dignity or which is hostile, degrading, humiliating or offensive to the pupil.
- Disability related victimisation; this occurs when a pupil is treated less favourably because they are taking / have taken or might be taking action in good faith under the Equality Act or because they are supporting such a person.

What claims can SENTW deal with?

SENTW deals with all disability related discrimination, harassment and victimisation claims against schools in Wales, except for claims about:

- maintained school admission decisions (these are currently heard by an admission appeal panel), and
- permanent exclusions from maintained schools (these are currently heard by exclusion appeals panels).

A **maintained school** is a school that is looked after and paid for by a Local Authority.

Obtaining information about your case – A form for asking questions.

If you think your child has been discriminated against, you can try to obtain information about your case from the School or Local Authority involved.

There is a question and answer form you can use to do this if you want to:

- you do not have to use the form but it may help you to find out more information about what happened,
- the form has specific set questions,
- if you decide to use the procedure you will need to request information in writing from the School or Local Authority before you make a claim to SENTW or within 28 days of making a claim,
- the School or Local Authority do not have to provide answers to your questions but if a reply is not received within 8 weeks of the request being sent or if the answers are unclear, then the Tribunal can take that into account when making its decision,
- if you do receive a reply, the answers may help you to decide whether you have a valid claim or not,
- if you decide to make a claim the answers can form part of the evidence,

you can get a copy of the form and guidance from the Government Equalities Office (GEO) (contact information at start of booklet).

What else can I do

The schools complaints procedure

It is usually in everyone's best interests to try and resolve disagreements in the most straight forward way possible. Schools are likely to have a complaints procedure which should be able to deal with complaints of discrimination, harassment or victimisation. Your school will be able to tell you more about its complaints procedure.

Local Authority Dispute Resolution Services

Local Authorities in Wales must have in place independent Dispute Resolution Services (DRS). The service deals with disputes between parents and schools in relation to Special Educational Needs. In some cases the service is also available to help resolve other disputes.

Your Local Authority will be able to tell you more about this service and whether or not it is available to you.

In some cases the School and Local Authority may be prepared to agree to use an independent mediation or conciliation service that deals with school related claims if there is such a service working in your area.

Even after you have submitted a claim you might find it useful to have discussions with the Responsible Body involved in your case as it is sometimes possible to resolve disputes in this way or to agree certain aspects of your claim, (a claim is always against the Responsible Body, it is usually either the School Governing Body, Local Authority or the proprietor of the school concerned).

What can SENTW do to put things right?

SENTW can order education providers to take action to help make up for any opportunities that your child has missed and to help prevent discrimination against disabled pupils in the future.

Examples might include:

- training for school staff and Governors,
- writing up new guidance for staff and Governors,
- making amendments to school or Local Authority policies,
- providing extra tuition to make up for lost learning,
- apologising to a pupil either verbally or in writing,
- providing trips or other opportunities to make up for activities that your child may have missed.

SENTW cannot order payment of financial compensation.

How long does it all take?

The whole process, from when we receive a claim to when we make a decision, usually takes about four to five months. It may take longer depending on the type of claim and how complicated it is.

Do I have to pay anything?

SENTW does not charge for this service.

Step 2 – making a claim

Time-limits

There is a **six month** time-limit for making a claim to us. We must receive your claim within six months of the alleged discrimination.

If you use or are referred to the Equalities and Human Rights Commission (EHRC) Conciliation Service before the six months is up then the time-limit for making a claim may be extended. It is important that you ask SENTW about the extension before the six month time-limit is up.

Who can make a claim?

A parent or person who has parental responsibility or care of the child within the definition of the Education Act 1996, can make a claim.

Children are also able to make their own claim. The claim can be made by the child or by a case friend on behalf of the child. Case friends must submit a declaration form. Information about the role of a case friend and a copy of the declaration form is contained in our **Information Pack and Forms for Children, Parents and Case Friends**.

How do I make a claim?

To make a claim you must complete and send a **Claim Application** to SENTW. Applications can be sent to us in the post or by email. The form is available on our website or as a printed copy on request.

Do I have to send the Claim Application myself?

No, but the Claim Application must be signed by you (that is the person making the Claim Application) or your representative on your behalf if you have given them permission to do so.

Please be aware that we will only send information about the claim to the nominated person named on the Claim Application. You will need to tick one of the boxes on the Claim Application to tell us who you want to receive information about the claim. If you do not tick a box, we will send the information to the first named person.

If you have a representative and you want them to receive all the letters and papers for the claim on your behalf, you should give their name and address on the Claim Application.

If you say on the Claim Application that your representative is going to receive all the papers, you will not receive any correspondence in connection with your claim before the hearing. Instead we will send it all to your representative. However, we will send you the final decision when it is issued.

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

Can I send the Claim Application by email?

Claim Applications that are sent by email must contain the electronic signature of the parent making the claim or, if permission is given, the electronic signature of their representative.

Who is the claim against?

Your claim is against the Responsible Body. This can vary depending on the type of case. It is usually either the School Governing Body, Local Authority or the proprietor of the school concerned.

The Responsible Body is the organisation that is responsible for the school. You don't need to tell us who the Responsible Body is; you just need to tell us the name and address of the school or place of education where the alleged discrimination took place.

If the school is maintained (looked after by the Local Authority) you also need to tell us the name of the Local Authority.

You cannot name an individual person like the head-teacher as the Responsible Body.

What do I need to tell you about?

If you make a claim you will need to tell us about the following:

Use this section as a checklist for when you complete your Claim Application

- Section 1, Your child**
This section is asking for details of your child and their disability
- Section 2, Your contact details**
This section is asking for your details
- Section 3, Information about persons who have or share parental responsibility for The child.** This section asks for details of anyone who shares parental responsibility for the child. If there is a good reason for not providing this information please tell us.
- Section 4 & 5, Information about your representative**
This section is asking for your representative's details and who should receive the paperwork.
- Section 6, Your Claim**
This section asks for information about your claim and the school or education setting involved. It is where you need to state what happened and why you are claiming. There are some guidance notes later on in this booklet to assist you.
- Section 7 Reasons**
This section is where you need to state what happened and why you are claiming.
- Section 8, Putting things right**
This section is where you can tell us what you would like to happen if the tribunal decides that your child has been unlawfully discriminated against.
- Sections 9 SEN appeal**
please state if you would like to consolidate an appeal.

Section 10, Steps already taken

Please tell us about the steps (if any) already taken to resolve the disagreement.

Section 11, Monitoring information

This section is asking for your details.

Section 12, Signatures

Please ensure that the form is signed before sending to the tribunal. If sending it as an email attachment you can type in your name (or your legally qualified representative can do so).

Section 13, Sending us your claim

This section explains where your completed claim form needs to be sent.

What documents should I send with the Claim?

In all cases you will need to send us:

a letter confirming that you have told all the persons and organisations who have or share parental responsibility for the child or have care of the child, that you are proposing to make an claim, **OR**

a letter giving the reasons why you have not notified all persons or not provided the names and addresses of all persons

If you think there is more information that will help SENTW and the Responsible Body to understand your claim, please send it.

Do I have to send original documents?

Please make sure that any documents you send to us are photocopies of the originals.

What do I do if I want to withdraw the claim?

If you decide that you no longer want to continue with the claim you can withdraw it at any stage in the process. To withdraw a claim you simply need to tell us this in writing, by email or in a letter.

Step 3 – after we receive your claim

What happens after we receive your Claim?

We will register your claim within 10 working days of receipt and send a copy to the responsible body.

We will notify when you the claim is registered and tell you when you have to send in your case statement and attendance form. You will have 30 working days to submit your case statement and attendance form.

We will write to you if we require further information before we can register your claim.

What is a case statement?

Your case statement is a chance to send us more information. This can be any information and evidence that you want us to look at as part of your claim.

When we register your claim we will also give the responsible body 30 working days to send us its case statement.

Do I have to send a case statement?

Yes, at the very least you must send us the following information as part of your case statement.

Your case statement must include:

- the views of the child on the issues raised in the claim, **or**
- the reasons why the views have not been provided.

It is a requirement of the Tribunal's Regulations that the views of the child are provided. **The tribunal panel will expect this information to be included in your case statement unless there is a good reason for not doing so.**

What will the Responsible Body do about my claim?

The responsible body must prepare a response and sent it to the tribunal within 30 working days of receiving the claim.

What if the Responsible Body does not reply?

If the responsible body does not send a response by the end of the time allowed, your claim will be passed to a Tribunal Chair who will decide what action should be taken. This may include refusing to allow the responsible body to take any further part in the proceedings.

What happens to the case statement?

Once the deadline for sending us case statements has passed we will send a copy of all the papers we have received about the claim to both you and the responsible body.

If the case goes to a hearing the tribunal panel will consider the case statements and any other documents provided by you and the responsible body, together with the evidence that it hears to help them make a decision about your case.

Step 4 – going to the hearing

A DVD is available to show you what to expect at a hearing. We will send you a DVD when we register your claim or you can ask us for a copy by contacting us.

When will you tell me about the date for the hearing?

We will write to you to let you know the date and time for when the hearing will take place.

Where will my hearing be held?

We hold hearings throughout Wales and will try to hold your hearing within an hour's travelling distance of your home. We usually hold hearings in public buildings, like hotels. The hearing itself will be in a private room.

We only use venues that are fully accessible for disabled users. Please do let us know if you have any particular needs.

What time will my hearing start and how long will it last?

Hearings usually start at 10:00 am. We will confirm the start time by letter. You should aim to arrive at least 30 minutes before the hearing starts. A hearing may take all day but does not normally continue after 5:00 pm.

Who will hear my claim?

Your claim will be heard by a tribunal panel. One person on the panel is a lawyer who will chair the hearing. The other two members have specialist knowledge and experience of children with special educational needs and disability.

Do I have to come to the hearing?

You do not have to attend the hearing, but it will be helpful if you do. The panel will want to hear what you have to say about your case and the panel may also have some questions to ask you. You may also want to ask questions yourself.

Who else can come to the hearing?

Your representative

You can have someone at the hearing to represent you whether or not you come yourself. That person does not have to be legally qualified.

The child's parents

A parent or a person with parental responsibility for the child may come to the hearing even if they are not the person making the claim.

Your child

Your child can attend and give evidence. It is likely that the panel would want to talk to your child for part of the hearing only. You must arrange for someone to look after your child whilst they are not in the hearing. **The tribunal staff will not be able to look after your child and there may not be a suitable place in the building for them to be looked after by the person caring for them.**

Someone to give you support

You can bring one person with you for support. They will be able to come into the hearing but will not be able to take part in the hearing or take notes during the hearing

Witnesses

You can bring up to two witnesses to the hearing.

Choosing who to bring as witnesses at the hearing can be difficult. The witnesses you choose should be able to discuss the main issues of your claim as they relate specifically to your child. Witnesses must expect to answer questions about their evidence. They will need a good knowledge of the facts and reasoning behind the information they give.

Any expert witness should be asked to give evidence with a view to assisting the Tribunal with their professional opinion rather than simply supporting your case. Expert evidence that appears biased can lose credibility.

An advocate

You can bring someone to communicate the views and wishes of the child.

Who can the Responsible Body bring to the hearing?

The responsible body can attend the hearing and bring a representative, whether or not legally qualified to the hearing. They may also call up to two witnesses to the hearing; bring an observer and an advocate. We will write to you before the hearing to confirm who is attending the hearing.

What expenses can be claimed?

You and your witnesses can claim travel expenses to come to the hearing. If you bring a friend or a relative to look after your child, you will be able to claim their travel expenses as well.

You should use public transport where possible (bus, standard-class rail travel). If you travel by car, you may claim a fixed amount for mileage. We will only pay for taxi fares if public transport is not available, or if you have particular needs. (You must tell us about these before making your claim for expenses.) We will need to authorise any taxi fare beforehand. We cannot pay for car parking and tolls.

Your witnesses can also claim a fixed amount for loss of earnings.

Step 5 – the Tribunal’s decision

When will I know the Tribunal’s decision?

The written decision and reasons will be sent by post usually within 10 working days of the hearing. We will send the decision to you, your representative (if you have one) and the responsible body.

Will you confirm that there was discrimination

If we decide that there was unlawful discrimination we will say so in our decision.

What can the Tribunal tell the Responsible Body to do?

We can order the Responsible Body to do anything reasonable to put right the discrimination. The law does not allow us to order financial compensation.

We can order actions that will help make up for any opportunities that your child has missed or prevent future discrimination. Examples include:

- training of school staff;
- drawing up new guidance for staff;
- changes to school policies;
- extra tuition, to make up for lost learning;
- changing the location of lessons or activities (but not changing physical premises);
- a written apology to your child; and
- trips or other opportunities to make up for activities that your child may have missed.

How long does the Responsible Body have to carry out the order?

We will tell the Responsible Body to carry out the order within a given time. They must do this by law. If they do not, the tribunal has no powers of enforcement, but there are other steps you may take to enforce the tribunal’s order.

What if the Responsible Body does not comply with the decision?

If the responsible body does not carry out our order within the time limit, and they cannot satisfactorily explain why, you are entitled to complain to the Department for Education and Skills. The address is:

Department for Education & Skills
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

What can I do if I am not happy about your decision?

Our decision is final. If you think there is a technical problem with the decision and how it was made you can ask us to review it. We will not review our decision simply because you are not happy with it. We must receive your written request to review within 28 calendar days of the date we issued the decision.

If you think that the decision is wrong in law you can appeal to the Administrative Appeals Chamber of the Upper Tribunal but you must first apply to us for permission to appeal. You must make your application so that we receive it no more than 28 calendar days from the date on the letter which we sent you with the decision.

Quick guide to the main stages of a claim

Step 2 – making a claim

You have a deadline of **6 months** from when the alleged discrimination took place, to make a claim to SENTW.

You will need to complete a Claim Application and tell us about:

- your child's disability if they have one,
- what happened,
- the dates when the alleged discrimination took place,
- why you think the treatment was because of a disability,
- in what way your child has been treated less favourably or placed at a disadvantage,
- in the case of indirect discrimination and discrimination arising from disability, why you think that treatment was not justified,
- what it is you are asking SENTW to do to put things right,
- if we can deal with your claim we will register it and send a copy to the Responsible Body. This is usually the Board of Governors of the School and / or the Local Authority and/or the proprietor of the school.

Step 3 – Case Statements

we will give you and the responsible body 30 working days to let us have any more information and evidence to do with your claim. We call this the case statement,

- you must do a case statement and include the views of the child. If you have not included the views you must tell us why not,
- If we can deal with your claim we will write to you to tell you that we have registered it.
- if the responsible body does not send a case statement or does not oppose the claim then they may not be able to attend the hearing,
- at the end of the case statement period we will send both you and the responsible body a copy of everything we have received

4 – going to the hearing

- we will write to you to tell you the date of the hearing,
- you are allowed to have a representative, up to 2 witnesses, a supporter and someone to tell us the views and wishes of the child at the hearing,
- hearings are usually held in hotels, the journey to the hearing should take no longer than a couple of hours,
- hearings usually start at 10am and last all day,
- a clerk from the Tribunal will meet you and show you where to go,
- a group of three people from the Tribunal will also be at the hearing. We call these people the tribunal panel.
- the tribunal panel will want to ask you and the Responsible Body about your case, what you think the relevant facts are and what should be done to put things right,
- both you and the Responsible Body will have a chance to ask questions.

Step 5 – the Tribunal’s decision

- We will usually send you our decision within 10 working days of the hearing,
- If we agree with your claim we can order the responsible body to do anything that is reasonable to put things right,
- We cannot order financial compensation,
- Our decision is final. If you think there is a technical error you can ask us to review it. If you think we are wrong on a point of law you can ask us for permission to appeal it to the Upper Tribunal. There are time-limits for these procedures