

Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

Special Educational Needs

Preparing a case statement A guide for Local Authorities

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

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.

About this guide

The aim of this guide is to provide helpful information to Local Authority officers about preparing a case statement where a Special Educational Needs Appeal has been made to the Special Educational Needs Tribunal for Wales (SENTW).

It is not a complete guide as the facts of each case will be different. Neither is it intended to be a guide to how the Education Act and Codes of Practice will apply to any particular set of circumstances

You should contact SENTW if you have any questions about the process. We cannot give legal advice or help with preparing an appeal or case statements.

Any reference in this guide made to parent as appellant will need to be substituted with the child or the child's case friend in cases where the appeal has been made by the child or the child's case friend.

Please note that all references in this guide to the child means the child or young person whom the appeal is about.

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.

What happens once an appeal is made to SENTW?

If we can deal with the appeal we will **register** it. This means we will write to the Local Authority named officer and enclose a copy of the appeal. We will also tell you about the time limit, 30 working days, for sending us the Local Authority's **case statement** and any written evidence on which the Local Authority wishes to rely. We will also write to the parents to give them the same amount of time for sending us their case statement.

At the end of the case statement period, we will ensure that the Local Authority and the parents see each other's case statement. We will give the Local Authority and the parent a page numbered set of all the papers that you will need to bring to the hearing.

We will also arrange a **hearing**. At the hearing a tribunal panel will consider all the written evidence, as well as anything the Local Authority, the parents and your respective witnesses have to say.

We will aim to issue our **decision** within approximately 10 working days after the hearing.

The whole process, from when we receive an appeal to when we make a decision, usually takes about four to five months. It can sometimes take longer if it is a very complex case.

Telling us about the case

Before the hearing the Local Authority must send us a case statement in writing. The Local Authority case statement should set out the relevant facts as you know them.

Any written evidence you want to submit must be in the case statement or be sent with it. Your case statement can also set out the arguments you want to put forward. You should go into as much detail as you think is necessary to make your case.

At the hearing, the Local Authority and any witnesses you bring will have a chance to give their views about the appeal and explain the facts to tribunal members.

The evidence you send us before the hearing and what you say on the day are equally important to us. The Tribunal's decision can only take into account the evidence the Local Authority and the parent give to us. If you want the Tribunal to take account of something, make sure that it is in the evidence.

Sending us evidence

When preparing the Local Authority's case statement, please help us by ensuring:

- where possible, papers should be single-sided A4 copies and not stapled,
- papers are in black and white. We cannot make colour copies so we suggest that you make a photocopy of any booklets, such as school prospectus and send this in,
- please do not add your own page numbers,
- please include a contents list for all reports and evidence you are submitting with your case statement, for example: Educational psychologist's report dated 5 March 2012,
- please do not send originals, only photocopies of the original.

Time limit for case statements

There is a strict time limit by which we must receive the Local Authority's case statement and any other evidence. We will write to the Local Authority's named officer to tell you when this is. Normally you will have 30 working days.

The Local Authority may want to send us videos, recordings and photographs. The same time limit applies to sending them in, but please send us five copies of any recording and photograph. Please only send us video and audio material on DVD and CD formats. You should try to keep recorded evidence as short as possible.

If the Local Authority fails to send us its case statement or we do not receive it within the time limit, we may decide the appeal on the papers submitted by the parent only or hold a hearing which the Local Authority may not be able to attend.

What the Tribunal's regulations require

The Local Authority **must** submit the following so that it is received in SENTWs office before the end of the case statement period:

- a copy of the disputed decision letter,
- if the child has one, a copy of the child's special educational needs statement, any documentation attached to or forming part of the statement and a copy of the latest review,
- all evidence to be relied on which has not already been submitted,
- a case statement,
- the case statement must state whether or not the Local Authority intends to oppose the appeal,
- the case statement must be signed by a person who is authorised to sign such documents on behalf of the Local Authority,

If the Local Authority intends to oppose the appeal the case statement must state:

- the grounds on which the appeal or any part of the appeal is opposed,
- a summary of the facts,
- the reasons for the disputed decision,
- the steps, if any, already taken to resolve the dispute,
- the views of the child concerning the issues raised in the appeal, or
- an explanation of why the Local Authority has not established the child's views,
- the name and address of the Local Authority's representative,
- the address to which documents for the Local Authority should be sent.

Information that we need you to tell us about

The child's special educational needs

The child's learning difficulties or disabilities are very important to the case. The tribunal panel will want to see all recent and relevant expert reports that are available.

The history of the case

The Tribunal's decision will relate to the child's current and future education, but earlier history is often relevant.

A brief history helps to put the matter in context. If you produce one, be selective. The Tribunal rarely needs to know about every letter and phone call between the LA and the parents, but the timing of events affecting the child can be important. For example, give the dates of assessments by professionals, when the child started school and then changed schools and how long particular types of provision lasted.

The child's progress, or lack of it, is often an important issue. In considering this, it is useful to have reports on assessments that were made over a period of time, school reports and individual education plans.

The present position

The Tribunal needs to form an accurate current picture of the child. The matters covered depend on the case, but they should be up to date and go into detail. They may include:

- current educational achievements and SATs results;
- behaviour at school and at home;
- latest assessments by professionals;
- details of current educational provision and, if relevant, non-educational provision;
or
- travel arrangements to and from school.

You can say which current arrangements are successful and which are proving to be less effective. If, for any reason, the child is not actually receiving all the provision he or she needs, please give details.

The legal reasons for the Local Authority's decision

The Local Authority's case statement should make clear legal reasons that the Local Authority relied on in making its decision.

For example, if the parents have expressed a preference for a placement in a maintained school (Education Act 1996, Schedule 27, paragraph 3), the

LA is only entitled to oppose it for one or more of the following three reasons:

- the placement is not suitable for the child,
- it would affect the education of others, or
- it would be an inefficient use of resources. The LA must decide this.

You should say which reasons you rely on and why.

LA Policies

The Tribunal will take account of Local Authority policies if they are set out in the written evidence or explained verbally. But you cannot assume that a Local Authority decision that was made in line with its policy will necessarily be approved by the Tribunal (if it was automatic, there would be no need for a Tribunal). The Tribunal will seriously consider local policies, particularly if you explain why they were adopted and if they do not conflict with national guidelines.

Schools

The Tribunal needs basic evidence about any school it is asked to consider. It needs to know:

- what type of school it is;
- how many pupils are on the roll;
- how many places are provided;
- how many children have special educational needs;
- how many have statements;
- how big the classes or other teaching groups are; and
- what relevant qualifications and experience the staff have.

Also, there is information more directly relevant to the child in question. The Tribunal needs to know:

- what support is proposed;
- what qualifications and experience the people providing support have;
- what curriculum and educational programmes will be delivered; and
- what arrangements are in place for parents and the school to co-operate.

If a residential placement is an issue, do educational reasons justify it and what are they?

- What school subjects or activities does the child find difficult? Are there others he or she is good at?
- What special help is the child receiving at the moment? Does a teacher or an assistant support them? If so, for how long and in which subjects?
- If the child has been taken out of the class for small-group or individual teaching, who does that teaching, what subjects are they taught and what is the aim of the teaching?
- Does the child use any special equipment?
- Does the child have an individual education plan (IEP)? If they do, please let us have a copy of it. Copies of earlier plans will also be useful.
- What does the school say about the child's progress? Copies of school reports, notes of annual review meetings and SATs results can help us.
- How many pupils are there in the child's class?
- How many adults look after the class?

Travel to and from school

Although transport is not an educational need, we may need to know:

- what is proposed;
- how long it will take;
- whether it will be by taxi or public transport;
- whether it will be transport with an escort; and
- the estimated cost.

Education at home

When it is proposed to educate the child at home, or anywhere other than school, we need to know what will be provided and in what way it will be appropriate. The Education Act also raises the question as to whether it would be inappropriate to educate the child in a school (1996 Act, section 319).

Therapy

If therapy is proposed, is this for educational reasons? What is the nature of the therapy, who will deliver it, what are that person's qualifications, and where will therapy be delivered and how often?

Monitoring

Who will monitor the child's progress and how often?

Cost

The cost of provision can be important. We often have to decide whether there would be an 'inefficient use of resources' or 'unreasonable public spending'. When this is likely to be a relevant issue, you should provide detailed figures and full explanations.

Late written evidence

Written evidence that is submitted after the deadline for case statements is called late written evidence. There are restrictions on the admission of late written evidence.

You can ask the tribunal panel on the day of the hearing whether the late evidence can be admitted. The tribunal panel will consider your request so long as:

- both parties agree to the admission of the late written evidence; OR
- you can show that the late written evidence meets the following conditions:
 - the late evidence was not, and could not reasonably have been, available before the end of the deadline for the case statement; and
 - a copy of the late evidence has been sent to SENTW and the other party so that it is received at least 5 clear working days before the hearing.
 - The tribunal panel may only admit the late written evidence after considering any representations from the other party and only if the evidence is unlikely to impede the efficient conduct of the hearing.
 - If the conditions are not met, the tribunal panel may still give permission to a party to submit late written evidence at the hearing if it can be shown that unless the evidence is admitted there is a serious risk of prejudice to the party seeking to rely on it.

The tribunal panel may refuse to admit late written evidence if it is of the view that to do so would be contrary to the interests of justice.

If the late written evidence has not already been copied to SENTW and the other party so that it is received at least 5 clear working days before the hearing, you should bring 5 copies of the late written evidence with you to the hearing.

Strike out

The Local Authority can make an application on limited grounds for an appeal to be struck out. If the Tribunal strikes out the appeal it will bring it to an end. The only grounds on which an appeal can be struck out are that the appeal:

- Is made otherwise than in accordance with the Tribunal's regulations
- Is not or is no longer within the Tribunal's jurisdiction
- Discloses no reasonable grounds
- Is an abuse of the Tribunal's process

An application to strike out an appeal must be made in writing setting out the grounds and reasons to be relied on in full.

Reaching agreement

Appeals only reach us if the parent disagrees with the Local Authority's decision, but it is quite in order for discussions between the parent and the Local Authority to continue taking place after an appeal has been made. It would be helpful if you told us about any parts of the appeal that you and the parent have been able to resolve after we have received the appeal.

The hearing

We will write to you, usually after we have received case statements to let you know the date when the hearing will take place.

The hearing will usually take place in a hotel no more than a couple of hours travelling distance from where the parent lives.

Hearings usually start at 10:00 in the morning and often take all day. You should aim to arrive at least 30 minutes before the hearing is due to start.