

Tribiwnlys Anghenion
Addysgol Arbennig Cymru



Special Educational
Needs Tribunal for Wales

Special Educational Needs

How to make an appeal

A guide for parents

Address:

**SENTW
Government Buildings
Spa Road East
Llandrindod Wells
Powys, LD1 5HA**

Email: tribunal.enquiries@gov.wales

Website: <http://specialeducationalneedstribunal.gov.wales/>

Helpline: 0300 025 9800

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 appeals process with the Special Educational Needs Tribunal for Wales (SENTW). This guide explains what an appeal involves. It describes each of the steps in the process. Staff who process the appeals through the tribunal office are called tribunal clerks. They will handle your letters, telephone calls and queries about the administration of your appeal. **They cannot give legal advice.**

This guide deals with how to make an appeal. 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 appeal 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 an appeal to SENTW.

This guide may also be helpful to children who wish to make their own appeal and to their case friend if they have one. If you would like to find out more about how children can make their own appeal, please ask us for a copy of our **Information Pack and Forms for Children, Parents and Case Friends**.

This guide refers to the appeal form, which you will need to complete if you want to make an appeal 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 decide appeals about children with special educational needs. Appeals are made by parents and are against certain decisions made by Local Authorities. 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.

Information resources

Special Educational Needs Code of Practice for Wales, Welsh Government, 2004 edition
Education, Wales, The Special Educational Needs Tribunal for Wales Regulations
The Education Act 1996, Chapter 56

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 an appeal

What can I appeal about?

Decisions about statutory assessments and reassessments

You can appeal if the Local Authority:

- will not carry out a statutory assessment of your child's special educational needs, following a request by you or by your child's school, or
- refuses to reassess your child's special educational needs following a request by you or by your child's school; so long as the local authority has **not** made a new assessment for at least six months.

Decisions about making and cancelling statements of special educational needs

You can appeal if the Local Authority:

- refuses to make a statement of your child's special educational needs, after a statutory assessment, or
- decides not to maintain (decides to cancel) your child's statement.

Decisions about the contents of the statement

You can appeal if the Local Authority:

- refuses to change the school named in your child's statement, if the statement is at least one year old and a previous request has not been made in the last 12 months (you can only ask for a school that is funded by a local authority). This is limited to the same type of school as the school named in the statement and it is not possible to ask us to change parts 2 or 3 of the statement, or
- decides not to change the statement after reassessing your child, or
- has made a statement, or has changed a previous statement, and you disagree with one or more of the following:
 - the part which describes your child's special educational needs (part 2),
 - the part which sets out the special educational provision (help) that the Local Authority thinks your child should receive (part 3),
 - the school or type of school named in the statement (part 4),
 - the Local Authority not naming a school (part 4).

Are there any issues that SENTW cannot deal with?

We cannot deal with the following:

- the Local Authority deciding not to amend the statement after an annual review,
- the way the Local Authority carried out the assessment, or the length of time that it took,
- how the Local Authority or the school is arranging to provide the help set out in your child's statement,
- the way the school is meeting your child's needs at School Action or School Action Plus,
- the description, in parts 5 and 6 of the statement, of your child's non-educational needs or how the Local Authority plans to meet those needs.

What decisions can SENTW make?

If the Tribunal agrees with an appeal it has the power to make an Order. The Order will be written in the Tribunal's decision.

Depending on the type of appeal an Order may be one or more of the following:

- to carry out an assessment or re-assessment,
- to make a statement,
- to change the statement,
- to change the school named in line with the parents wishes,
- to continue a statement,
- to cancel (cease to maintain) a statement.

What else can I do?

Even if you make an appeal you should still talk to your Local Authority to try and reach agreement. All Local Authorities must have **independent Disagreement Resolution Services** (DRS). The service deals with disputes between parents, the Local Authority and schools in relation to Special Educational Needs. Your Local Authority must provide information about how to access its independent DRS.

If you decide to use DRS after an appeal has been registered you may make an application to the president of the Tribunal to stop the appeal for a period of time. You may for instance wish to stop the appeal whilst DRS meetings are taking place.

It is helpful to let us know about any agreements you and the Local Authority are able to reach. If at any time you decide that you no longer wish to continue with your appeal, you will need to email or write to us to tell us that you are withdrawing the appeal.

What help can I get?

The Local Authority should have told you about the following groups that you may be able to get advice from:

- a voluntary organisation which helps people with special needs,
- a parents' group,
- a independent parental supporter,
- a parent partnership adviser.

The Local Authority should also have told you about its named officer who you can work with to try and sort out the issues you are appealing against. The groups above and your Local Authority officer may be able to put you in touch with an independent supporter or a representative.

You may be entitled to Legal Aid (or public) funding for help in preparing your appeal. A solicitor will be able to advise you on whether you are entitled to this. The Law Society or your local citizens' advice bureau will be able to give you the names of solicitors who take part in the Legal Aid scheme and are experienced in these matters. You will not be able to get public funding for a lawyer to represent you at the hearing.

How long does it all take?

The process of appealing, from when we receive your appeal to when we have the hearing and make a decision, usually takes four to five months. It may take longer depending on the type of case and how complicated it is.

Do I have to pay anything?

SENTW does not charge for this service.

Step 2 – making an appeal

Time-limits

There is a **two-month** time limit for appealing to us. We must receive your appeal no later than two-months from the date when the Local Authority told you in a letter about its final decision.

If you use or are referred to a Disagreement Resolution Service (DRS) before the two-months is up, then the time-limit for making an appeal may be extended. Your Local Authority must provide information about how to access its independent DRS. It is important that you ask SENTW about the extension before the two-month time-limit is up.

Who can make an appeal?

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

Children are also able to make their own appeal. The appeal 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 an appeal?

To make an appeal you must complete and send an **Appeal 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 Appeal Application myself?

No, but the Appeal Application must be signed by you (that is the person making the Appeal 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 appeal to the nominated person named on the Appeal Application. You will need to tick one of the boxes on the Appeal Application to tell us who you want to receive information about the appeal. 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 appeal on your behalf, you should give their name and address on the Appeal Application.

If you say on the Appeal Application that your representative is going to receive all the papers, you will not receive any correspondence in connection with your appeal 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 Appeal Application by email?

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

What do I need to tell you about?

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

You must give the following information on the **Appeal Application**:

- Section 1, Information about the child**
This section asks for details about the child or young person whom the appeal is about.
- Section 2, Information about the person making the appeal**
This section asks 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, Information about your representative**
This section asks for the contact details of your representative, if you have one.
- Section 5, Tell us who you want to receive information about the appeal**
This section asks you to tick a box to tell us who you want to receive information about the appeal. We can only send information to one person.
- Section 6, Tell us about the decision letter from the Local Authority**
This section asks you to tell us the name of your Local Authority and the date of the letter you received from the Local Authority telling you about its final decision.
- Section 7, Tell us if the Local Authority has made a statement of your child's Special Educational Needs.** This section asks you to tell us if your child has a statement of Special Educational Needs and the date the statement was signed by the Local Authority.
- Section 8, Tell us what you are appealing against**
this section asks you to identify what decision you are appealing against.
- Sections 9 and 10, If the appeal is about the school named in the statement**
You only need to complete this section if the appeal is about the school named in the statement. This section asks you to tell us the name and address of the school you would prefer to have named in the statement. It also asks you to confirm that you have told the Local Authority responsible for maintaining the school and the

Head Teacher or proprietor of the school that you have asked for the school to be named in the statement.

Section 11, Tell us about your reasons for appealing

This section asks you to give the reasons why you are appealing. These are your 'grounds of appeal'. Your reasons do not have to be lengthy or written in legal language, but you need to say more than just, 'I disagree'. You should explain why you disagree with the decision you are appealing against and what you are asking us to do.

Depending on what your appeal is about you may want to cover:

- why you think your child is not making progress,
- why you think your child needs extra help at school,
- what sort of extra help you think your child needs,
- if your child has a statement, what changes you want to see, and
- if you want your child to go to a different school, why you think that school will meet your child's needs better.

If you have information or evidence which supports your appeal, you should include it when you send in your appeal.

Section 12, Tell us about the steps, if any, already taken to resolve the dispute

This section asks you to tell us about any meetings you have had with the Local Authority to try and resolve the dispute. If you have not taken up Disagreement Resolution Service (DRS) it will be helpful to give your reasons why not.

Section 13, Claims about disability discrimination

This section asks whether you have an existing disability discrimination claim before the Tribunal or if you would like more information about how to make a disability discrimination claim.

Section 14, Monitoring Information

The information you provide in this section is used for monitoring and statistics.

Section 15, your signature

This section is where you must sign the form. Your representative can sign the form on your behalf if you have given them permission to do so. Forms that are sent by email must contain an electronic signature.

Where an appeal is made by a child, the Appeal Application must be signed by the child or the child's case friend.

Section 16, Sending us the Appeal Application

This section provides SENTW's postal and email addresses.

What documents should I send with the Appeal Application?

Use this section as a check list for when you send us your Appeal Application.

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 appeal, **OR**
- a letter giving the reasons why you have not notified all persons or not provided the names and addresses of all persons
- the documents you will be relying on to support your appeal.

If the appeal is about the school you want to have named in the statement you must send us either:

a) If the school is maintained (funded) by the Local Authority:

- a copy of your letter to the Head Teacher of the school saying that you would like the school named in the statement, **and**
- a copy of your letter to the Local Authority responsible for maintaining (funding) the school saying that you would like the school named in the statement, **OR**

b) If the school is an independent school (a school that is not funded by the Local Authority) or a non maintained special school:

- a copy of the letter from the school confirming there is a place available for the child

Do I have to send original documents?

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

Step 3 – after we receive your appeal

What happens after we receive your appeal?

We will register your appeal within 10 working days of receipt and send a copy to the Local Authority.

We will notify when you the appeal 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 appeal.

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 appeal.

When we register your appeal we will also give the Local Authority 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 appeal, **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 Local Authority do about my appeal?

The Local Authority must prepare a response and sent it to the tribunal within 30 working days of receiving the appeal.

What if the Local Authority does not reply?

If the Local Authority does not send a response by the end of the time allowed, your appeal will be passed to a Tribunal Chair who will decide what action should be taken. This may include refusing to allow the Local Authority 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 appeal to both you and the Local Authority.

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

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

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

Step 4 – going to the hearing

Please find a video clip on our website www.sentw.gov.wales – *Guidance and Forms>Aled's Tribunal*, which shows you what to expect at a hearing.

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

If your Appeal is about Refusal to Assess, you will not be required to attend an oral hearing, the Tribunal will make a Decision about your appeal based on the papers that are submitted from yourself and the Local Authority, this is called a Paper Hearing. If you feel that an Oral hearing is necessary, please ensure that you tick the correct box to request an Oral hearing on your Appeal Application Form.

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 appeal?

Your appeal 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 appeal.

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 appeal 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 Local Authority bring to the hearing?

The Local Authority 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 Local Authority.

How long does the Local Authority have to carry out the order?

If the Tribunal agrees with your appeal it has the power to make an order. The Local Authority must carry out our order within a fixed amount of time starting from when the decision was issued.

- to carry out an assessment or re-assessment – within five weeks,
- to make a statement – within five weeks,
- to change the statement – within five weeks,
- to change the school named in line with the parents wishes – within two weeks,
- to continue a statement – immediately,
- to cancel (cease to maintain) a statement – immediately.

These timescales also apply when the Local Authority tells us they do not oppose the appeal. If the Local Authority does not keep to the order in the time we say, you may have to apply to the High Court to enforce it.

What if the Local Authority does not comply with the decision?

If the Local Authority 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

You can also make a complaint to the Public Services Ombudsman:

Address: Public Services Ombudsman
1 Ffordd yr Hen Gae
Pencoed, CF35 5LJ
Email: www.ombudsman-wales.org.uk
Advice Team: 01656 641199

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 an appeal

Step 1 – deciding whether to make an appeal

You can only appeal against certain decisions:

- Refusal to assess or reassess,
- Refusal to statement,
- The contents of the final statement,
- Cancelling the statement,
- Refusal to amend the statement after reassessment,
- Refusal to change school named in the statement (only where asking for a school funded by the LA, the statement is at least 1 year old and a previous request has not been made in the last 12 months).

Step 2 – making an appeal

- You will need to complete an Appeal Application.
- Your Appeal Application must be received in SENTW's office no later than 2 months, starting from the date when the Local Authority told you about its final decision in a letter.
- If we can deal with your appeal we will write to you to tell you that we have registered it.
- We will also send a copy of your appeal application to the LA.
- If we cannot deal with your appeal we write to you and tell you why.

Step 3 – completing my case statements

- Once we have registered your appeal, we will give you and the Local Authority 30 working days to let us have any more information and evidence to do with your appeal. We call this a case statement.
- You must do a case statement and at the very least include:
 - the views of the child on the issues to do with the appeal, or
 - the reasons why the views have not been provided.
- If the Local Authority does not send a case statement or does not oppose the appeal then they may not be able to take any further part in the appeal.
- At the end of the case statement we will send both you and the Local Authority 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 about the views and wishes of the child at the hearing,
- The child whom the appeal is about and a parent or person with parental responsibility may come to the hearing even if they are not the person making the appeal,
- Hearings are usually held in hotels, the journey from your home to the hearing should take no longer than an hour,
- 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 Local Authority about your case, what you think the relevant facts are and what changes you want made,
- The tribunal panel will also want any witnesses at the hearing to talk about their evidence.
- Both you and the Local Authority will have a chance to ask questions, at the end of the hearing you will have a chance to give your closing comments.

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 appeal we can make an order against the Local Authority,
- We cannot order financial compensation,
- If we disagree with your appeal we will dismiss it and take no further action,
- 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.