

SPECIAL EDUCATIONAL NEEDS TRIBUNAL WALES PRACTICE DIRECTION

Introduction

1. In this Practice Direction “the Act” refers to the Education Act 1996; “the Regulations” refer to the Special Educational Needs Regulations 2012 and “the Tribunal” refers to the Special Educational Needs Tribunal Wales.
2. Neither the Act nor the Regulations make specific reference to the preparation and/or content of bundles of documents for hearings. Over time, one of the consequences has been that Panels hearing Appeals/Claims have been presented with very large bundles of papers, often over 700 pages, which contain duplicate material, material which is not relevant and outdated material.
3. Over the last 12 months, the Tribunal has discussed this problem with its user groups and made suggestions as to how the position could be rectified. Whilst there has been a general consensus about many of the suggestions made, these have not been implemented by the users.
4. The Tribunal, in order to continue to hear cases during the present Coronavirus pandemic, has invested in virtual hearing rooms and it is anticipated that the Tribunal will continue to use such technology even after this pandemic has subsided. Consequently, all bundles have to be in electronic format. It is even more difficult to deal with poorly prepared bundles in electronic format and, consequently, there is a clear and compelling need for clear directions as to the preparation and content of electronic bundles for hearings.
5. This Practice Direction shall apply in the first instance for a period of 6 months from the date that it is made. Before the end of that period the Practice Direction shall be reviewed by the President of the Special Educational Need Tribunal Wales and the President shall decide whether the Practice Direction shall continue in force, either in its current form or with modification, and, if so, for what period of time.

Directions

6. The bundle for Tribunal appeal hearings must include, where available, the documents as set out at items A to K below;
 - A. The appeal application, any amended grounds of appeal and the current Statement (if applicable)
 - B. Both parties Statement of Case
 - C. The LA decision letter
 - D. Any requests for changes made by a party.
 - E. Tribunal orders and any documents ordered to be filed by the Tribunal

- F. Any relevant correspondence between the parties. Please note that this should not include correspondence relating to dates of meetings or other matters that are not directly pertinent to the appeal/claim.
 - G. Relevant professional reports which have been prepared no longer than three years from the date of the appeal
 - H. Annual review reports which are relevant to the issues to be decided by the Tribunal for the last two years
 - I. Any assessment report and offer of a place (if applicable) from the educational establishment named in Part 4 of the Statement and also (if applicable) details of the cost of the proposed educational placement and the cost of transport for the young person to the educational placement.
 - J. Final working document and /or an agreed list of outstanding issues
 - K. Statements of witnesses to be given in evidence
7. The bundles shall, for items D to K, consist of no more than 300 pages. This page limit is not a target and many cases will not require this number of pages. Items A to C are excluded from the 300 page limit as it is important that the parties to the hearing have the opportunity to put their case fully.
8. The bundle for Tribunal claim hearings must include, where available, the documents as set out at item 1 to 6 below;
- 1) The claim application, any amended grounds of the claim and the current Statement (if applicable)
 - 2) The Responsible Body's response to the claim and any supplementary or amended response
 - 3) Any requests for changes made by a party
 - 4) Tribunal orders and any documents ordered to be filed by the Tribunal
 - 5) Any relevant correspondence between the parties
 - 6) Statements of witnesses to be given in evidence
9. The bundles shall, for items 4 to 6, consist of no more than 200 pages. This page limit is not a target and many cases will not require this number of pages. Items 1 to 2 are excluded from the 200 page limit, as it is important that the parties to the hearing have the opportunity to put their case fully.
10. If one or more of the parties consider that it would not be possible to produce the evidence that is required for the hearing within the 300 or 200 page maximum on the basis that it is not consistent with the overall objective of dealing fairly and justly with cases, then the party or parties holding that view should make an application to the Tribunal to extend the page limit giving clear reasons why an increase is required and why the inclusion of the documents is necessary for the fair hearing of the matter.
11. The bundles shall be prepared in electronic format by the Local Authority for an appeal and by the Responsible Body for a claim. The appellant shall co-operate with the Local Authority/Responsible Body in the preparation of the bundle by providing any documents requested by the Local Authority/Responsible Body for inclusion in the bundle. In the event of a failure of co-operation to ensure that relevant documents are provided within the Bundle, the Panel conducting the hearing may draw such inferences, as appropriate, (including, for the

avoidance of doubt, adverse inferences) from the failure when determining the appeal/claim.

12. The Local Authority /Responsible Body shall ensure that all documents included in the bundle are complete, legible and not duplicated. It is the responsibility of the Local Authority/Responsible Body to obtain complete and legible documents. The pages of the bundles shall be numbered and at the front of the bundles an index shall be prepared giving the page numbers of each of the documents and detailing the type of document, its date and the author along with their position.
13. Prior to finalisation of the bundle, a draft bundle shall be sent to the appellant to be agreed. If the Bundle submitted does not comply with this Practice Direction the parties shall be informed by the Tribunal Secretariat of the non-compliance and within 3 working days of such notification and the Local Authority/Responsible Body must ensure that that the Bundle is made compliant. Failure on the part of the Local Authority/Responsible Body to comply with this obligation may lead to a debarring order against it if the justice of the case so demands. If no response is received from the appellant agreeing the bundle within 5 working days of being sent the Local Authority/Responsible Body shall be entitled to presume that the bundle is agreed and it may be submitted to the Tribunal.
14. The Local Authority/Responsible Body shall send the bundle in electronic pdf format to the Tribunal at Tribunal.Enquiries@gov.wales 15 working days prior to the hearing of the appeal. At the same time the Local Authority/Responsible Body shall send the electronic bundle to the appellant.

Sir Wyn Williams
President of Welsh Tribunals

Rhiannon Walker
President Special Educational Needs Tribunal Wales

26 June 2020