Section I (school place) appeals

For parents/carers of children and young people with SEND

This guidance sheet will tell you:

- when you can appeal a school place decision
- the legal reasons your choice of school can be refused
- evidence and arguments in support of your appeal
- different types of school and how this affects your appeal
- how to appeal

When can I appeal?

In most cases, you must lodge your appeal within two months of one of the following:

- The issue of the final education, health and care plan (EHCP) (first issue)
- The issue of a final amended EHCP, following an annual review
- A decision to maintain the EHCP (without any changes), following an annual review

The tribunal will consider requests to submit a late appeal. However, you will have to explain why your appeal is late, and why you think your appeal should be heard. Tribunal will then decide whether to allow your appeal.

It is important to note that there is no right of appeal after the two month deadline even if there are school consultations still pending.

Should I also appeal sections B and F?

If you are considering a section I appeal against the named school, you should also consider sections B (description of SEND) and F (provision) of the EHCP. It may be advisable to appeal against these sections if:

1) The description of SEND in section B is not up to date and does not reflect the full scope of the child's current needs.

   And/or

2) The provision detailed in section F is not up to date and does not reflect what the young person is receiving, or what you would like them to receive.

It may undermine your appeal if the contents of section F do not reflect provision that is appropriate to the setting that you are appealing for. For example, if you want to appeal for a specialist autism school, but section F of the EHCP describes provision that could be delivered in an ordinary mainstream school, the tribunal is unlikely to find in your favour.

Bear in mind that any appeal against sections B and/or F would need to evidenced by professional reports, eg from the school, an educational psychologist, speech and language therapist (SALT), occupational therapist (OT), portage or other similar professional.

If the EHCP has been recently updated and/or you are confident that it does reflect the child's needs accurately, then you may be in a good position to appeal section I only.

Legal reasons for refusing your preference

There are only three reasons in law why the LA can refuse to name your preferred school (assuming you are asking for a state-maintained or section 41 school):

a) **School is unsuitable**
"The setting is unsuitable for the age, ability, aptitude or special educational needs ("SEN") of the child or young person"

b) **Significant impact on other children in the school**
"The attendance of the child or young person would be incompatible with the provision of efficient education for others"

c) **Unjustified public expense**
"The attendance of the child or young person would be incompatible with the efficient use of resources."

The legislation supporting this is explained by IPSEA at: https://www.ipsea.org.uk/choosing-a-schoolcollege-with-an-ehc-plan

Suitability

It is important to clarify whether the school is suitable for your child. This not the same as whether the school is full. It is important to find out whether the school would in theory be suitable, if a space were available. If you believe that the school is suitable, but they have responded that it is not, you can appeal, and would need to provide evidence that supports your argument. Equally if the school has said they are suitable, but do not currently have any space, you can proceed to appeal.

When considering suitability, peer group is very important. For example, a child with a moderate learning difficulty who is able to speak in short sentences may not be suitable for a school like The Avenue, which typically takes children who are pre-verbal.

Sometimes a school may say that they are unsuitable because they do not have sufficient space, or staff available to support a child. Strictly speaking, this is not "unsuitability" but more correctly describes point b) above – an impact on other children in the school.

Significant impact on others

This is a very common reason for not offering a school place to a child. The school may say they are oversubscribed, or full. However, being full is not a lawful reason not to name a school. The school would need to show that it is so full that admitting just one more child would tip the school into a situation where it could not efficiently provide for others.

The tribunal will want to understand the nature of the specific difficulties that admitting just one more child would present. There would need to be more than just an impact on others. For example, it would not be enough to say that the school may have to reduce access to the music room (for example) to accommodate more children. This would more correctly describe an *impact* on others, but not a significant impact or, to use the legal wording, an "*incompatibility*" with their efficient education.

However, if admitting your child would result in other children being significantly dysregulated, or if it would take support away from other children, and this could not be mitigated by using other spaces or employing additional staff, then the school may reach the incompatibility threshold and, if the matter were to go to a hearing, the tribunal may rule in favour of the LA.

If the consultation response from the school does not offer sufficient detail, you can try asking your case officer for more clarity. If this is not provided, IPSEA have a template letter that you can use to seek clarity. Appeal timeframes can be lengthy, so you may wish to lodge your appeal first. https://www.ipsea.org.uk/complaining-when-the-la-will-not-consult-with-the-school-or-college-you-request

Unjustified public expense

This reason for refusing your school preference may arise if the LA has identified an alternative, more cost-effective school which they believe is suitable. This is the reason often used if a parent requests an independent school place, and the LA favours a state option.

The LA must consider parental preference, and it has a responsibility to ensure that the school can deliver the provision set out in section F of the EHCP. However, it does not have any obligation to provide the "best" school for your child, if there is another "good enough" school available which is cheaper.

To support an appeal on these grounds, you may wish to consider gathering the following evidence. This evidence is not required when you first lodge the appeal. You will have time after the appeal is registered to gather additional evidence.

- Ideally, you need to submit the full costs of your chosen school, together with a full breakdown of what they provide. If the cost of your preferred school is not significantly more than the LA's preference (eg within £5000/year) then the tribunal may consider that parental preference outweighs the additional cost to the public purse.

- You may want to check what therapies are part of your preferred school package and if the LA's school has the same offer. If there are additional therapies that would need to be provided additional to the school's basic offer, this may increase the cost of the LA's preferred school.
- How will your preferred school deliver the provision set out in section F? How does this differ to the LA's preferred school? If you believe the named school cannot meet your child's needs, you will need to evidence this. Visiting both schools will help you get clarity about what each school can provide. Make use of evidence in reports about your child which demonstrate the extent of your child's difficulties and/or the extent of provision required to support your child.
- Consider transport. Transport costs are taken into account so if the school you are requesting is further away, you may wish to consider whether you can transport your child yourself. This may enable you to reach agreement.
- Consider information available in the school prospectus and Ofsted reports. You might also find the school's SEND information report helpful.
- Identify any important information that is missing, including any assessments that have not been carried out. Missing information may prevent the full extent of your child's needs being known and understood.

Notifying the school

You must formally notify the school which you have requested (if they haven't been consulted by the LA already). If the LA has consulted and a response has been given, or is awaited, then this is sufficient and you don't have to write to them yourself in this circumstance.

If the above doesn't apply, you must provide written notification to the headteacher stating that you are seeking (through appeal) to have their school named on your child's EHCP.

You can submit the appeal first and then notify the school afterwards. You must send a copy of this notification to tribunal and to the LA. This should be done within ten days of receiving confirmation that your appeal has been registered with the tribunal.

What if I don't know what school I want?

If you are not sure what school you want, or if you are flexible, you can ask for a type of school when you lodge your appeal, and you can update that to a specific school once you have identified one as your preference. You will need to update the tribunal and the LA as soon as you have identified a school. You will need to select a preference eventually, as tribunal will not be able to consider multiple schools at a hearing.

The tribunal will expect parents and the LA to work together resolve the situation as the appeal progresses. Bear in mind that the tribunal will not be able to identify a school themselves. They will only be able to choose between the two schools that are put to them by the LA and the parent. If the tribunal concludes that neither school is suitable, they may agree to postpone or adjourn the hearing date to allow more time for further consultations.

School consultations

Different schools have a different status in law. They can be state-maintained or independent. Some independent schools are on the Section 41 list. These schools have agreed with the government that if their school is named in a pupil's EHCP by an LA or by tribunal, they will admit that pupil.

The LA will usually agree to send consultations to any state-maintained or section 41 school that you request. They may also send consultations to schools of their choosing, and they are within their rights to do so.

Be alert to the fact that the LA will be sending the EHCP to your chosen school for consultation. If you are appealing sections B and/or F as well as I, the information the school receives may not be full and accurate. You may wish to alert the school to your concerns about inaccuracies and incompleteness in the current EHCP.

The LA is unlikely to agree to consult with independent schools unless all state options have been ruled out. If you are interested in an independent school, you are likely to have to approach them directly yourself. Unfortunately, if they do not respond to you or do not agree to take the consultation further, there is little you can do to challenge that.

Independent schools

The tribunal can only name a wholly independent school if the school has confirmed that they are able to offer a place to your child. So, if the school is a wholly independent special school (non-section 41), you will need a letter from them confirming that a place is available, and how long it will be kept open for.

Usually, you will do this using a request for change form (SEND7)
https://www.gov.uk/government/publications/form-send7-request-for-change

How to appeal

The appeal form

You must complete form SEND35. This is available here as a PDF form which you can download and edit:
https://www.gov.uk/government/publications/form-send35-special-educational-needs-and-disability-tribunal-appeal

The boxes are quite small, so you can, if necessary, send additional information on a suitably headed word document. Remember you can send further evidence later.

There is also an option to complete the process online.

How to send in an appeal to tribunal

You will need:

- completed SEND35 form
- EHCP and section K documents (appendices)
- LA decision letter (issuing the final EHCP/final amended EHCP/decision to maintain)

You do not need a mediation certificate for appeals that are only section I. However, if you decide to appeal B and F as well, you will need a mediation certificate.
Make sure your documents are all clearly labelled. You may want to zip the evidence up in one folder.

Email send@justice.co.uk

Put 'NEW APPEAL' in the subject line, then the child's name and date of birth (DoB). Use a simple covering email like this:

Dear Sendist,
Please see attached documentation in respect of a new appeal for my child [NAME], DoB.
You will find attached:

- *Appeal form*
- *LA decision letter*
- *EHCP and section K documents*
- *Evidence in support of the appeal (various documents, as listed on the appeal form)*

Your sincerely [parent name]

You should get an immediate automated response from the tribunal. Be aware that tribunal can only accept emails up to 14MG so if your attachments add up to more than this you'll need to split them in two. You can make this clear in the subject line, saying EMAIL 1 of 2.

What help can I get with my appeal?

Reading IASS can:

- help you identify a shortlist of potentially suitable schools
- help you understand school consultation responses
- help you make the most of any evidence you have
- explain the legal arguments that will apply in your case
- explain the appeal timetable and help you understand correspondence from tribunal
- explain how to communicate with tribunal and the LA
- support you to prepare your views for consideration as evidence
- in some limited cases, act as your representative if the matter proceeds to a hearing

Where else can I get help?

IPSEA is an online advice service on SEND which has lots of information on appeals:

https://www.ipsea.org.uk/appealing-to-the-send-tribunal

The tribunal has also produced its own guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776348/send37-eng.pdf