



Tribunals Judiciary

PRACTICE DIRECTION HEALTH EDUCATION AND SOCIAL CARE CHAMBER SPECIAL EDUCATIONAL NEEDS OR DISABILITY DISCRIMINATION IN SCHOOLS CASES

1. This Practice Direction applies to a “special educational needs case” or “disability discrimination in schools case,” as defined in Rule 1(3) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

DEFINITIONS

2. In this Practice Direction:-
 - a. “Child” means the person in respect of whom a parent makes an application to the Tribunal;
 - b. “Child’s statement” means the statement of special educational needs relating to the child made under section 324 of the Education Act 1996;
 - c. “Final hearing” means a hearing held to dispose of proceedings;
 - d. “LEA” means the local education authority which made the decision in relation to which the application is made;
 - e. “Parent” has the meaning given in section 576 of the Education Act 1996 (and includes a parent who has made or may make an application to the Tribunal under the Education Act 1996 or the Disability Discrimination Act 1995);
 - f. “The 2008 Rules” means the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

INFORMATION OR DOCUMENTS REQUIRED IN THE APPLICATION NOTICE

3. Rule 20(2) of the 2008 Rules states that the application notice must be signed and must include—
 - a. the name and address of the applicant;
 - b. the name and address of the applicant’s representative (if any);
 - c. an address where documents for the applicant may be sent or delivered;
 - d. the name and address of any respondent
 - e. details of the decision or act, or failure to decide or act, to which the proceedings relate;
 - f. the result the applicant is seeking;
 - g. the grounds on which the applicant relies; and
 - h. any further information or documents required by an applicable practice direction.
4. Rule 20(3) states that the applicant must send with the application notice a copy of any written record of any decision under challenge, and any statement of reasons for that decision that the applicant has or can reasonably obtain.
5. In a special educational needs case the application notice must also include:-
 - a. the name and date of birth of the child;

- b. if possible, the names and addresses of all persons or bodies who have or share parental responsibility for the child or have care of the child;
 - c. the name of the LEA and the date upon which the applicant was notified of the decision in relation to which the application is made;
 - d. a list of documents included in or provided with the application notice;
 - e. if the applicant seeks an order that a child's statement shall be amended, details as to which part or parts of the statement the application relates as well as details of the changes sought; and
 - f. if the applicant seeks an order that a different school from that already named in the child's statement be named in it either; the name and address of that preferred school, or a sufficient description of the type and nature of the school which the applicant considers would constitute an appropriate placement for the child; and if available, in the case of an independent or non-maintained school, written confirmation that there is a place available for the child (provision of place) and, if the school is an independent school and not registered to take a pupil with the special educational needs of the child, confirmation from the Secretary of State that he consents to the child attending that school (enabling consent);
 - g. where the application is made under section 326 of or paragraphs 8 or 11 of Schedule 27 to the Education Act 1996, a copy of the child's statement together with all appendices and supporting documentation provided by the LEA to the parent, if available; and
 - h. where the application notice states the name of a preferred school, written confirmation that the applicant has informed the school that they proposed to request that it be named in the child's statement in proceedings before the Tribunal.
6. In a disability discrimination case the application notice must also include:-
 - a. the name and date of birth of the child;
 - b. the names and addresses of all persons or bodies who have or share parental responsibility for the child or have care of the child;
 - c. where it is alleged that a school has discriminated against a child, the name and address of the school;
 - d. where it is alleged that a local authority has discriminated against a child or where the school named is maintained by a local authority, the name of the local authority;
 - e. a description of the child's disability, including evidence of a medical or other professional diagnosis, if available;
 - f. details of the alleged discrimination, including the date or dates on which it is alleged to have taken place; and
 - g. if there is a statement of special educational needs in relation to the child, a copy of that statement and appendices, if available.
7. If the applicant fails to include the required information or documents with the application notice, the Tribunal may waive the requirement under rule 7(2)(a), or require the applicant to remedy that failure under rule 7(2)(b) before admitting the application notice.
8. Under Rule 8(3) of the 2008 Rules the Tribunal must strike out the whole or a part of the proceedings if the Tribunal does not have jurisdiction in relation to the proceedings or that part of them and it does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them. In such circumstances, the respondent may not be sent a copy of the application notice unless that respondent is an LEA which has requested that they be sent such application notices.

INFORMATION OR DOCUMENTS REQUIRED IN THE RESPONSE

9. Rule 21(2) states the response must include:-
 - a. the name and address of the respondent;
 - b. the name and address of the respondent's representative (if any);
 - c. an address where documents for the respondent may be sent or delivered;
 - d. a statement as to whether the respondent opposes the applicant's case and, if so, any grounds for such opposition which are not contained in another document provided with the response;
 - e. in a special educational needs case, the views of the child about the issues raised by the proceedings, or the reason why the respondent has not ascertained those views; and
 - f. any further information or documents required by an applicable practice direction or direction.

10. In a special educational needs case the response must also include:-
 - a. where the application relates to the contents of the child's statement and the LEA states it does not resist the application or that it withdraws its opposition to the application, a final amended statement incorporating the amendments (if any) to the child's statement which it agrees to make;
 - b. a copy of the child's statement, appendices and supporting documents where these were not submitted by the applicant with the notice of application;
 - c. any supplemental evidence and professional reports currently available to the LEA and upon which it intends to rely, and
 - d. detailed grounds setting out what parts of the application are admitted, detailed grounds setting out what parts of the application are resisted, and details of any legal points that will be relied on at a final hearing.

11. In a disability discrimination in schools case the response must also include:-
 - a. detailed grounds setting out what parts of the application are admitted, detailed grounds setting out what parts of the application are resisted, and details of any legal points that will be relied on at a final hearing.

12. If the respondent fails to include the required information or documents with the response, the Tribunal may waive the requirement under rule 7(2)(a), or require the respondent to remedy that failure under rule 7(2)(b) before admitting the response.

NOTIFICATION OF THE RIGHT OF APPEAL IN SPECIAL EDUCATIONAL NEEDS CASES

13. Under Regulation 12(2)(b), (4)(b), 17(1)(b), (2)(b), (2)(c), (9) of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 ("the 2001 Regulations"), the LEA must notify the child's parent of:
 - a. the parent's right of appeal to the Tribunal;
 - b. the time limit within which the appeal must be made;
 - c. the availability of dispute resolution arrangements;
 - d. the fact that use of such arrangements does not prejudice the right to appeal.

14. The Tribunal may have regard to any failure on the part of the LEA to comply with the requirements of the 2001 Regulations when considering whether to extend time where the application notice is not provided within the time limit set out in the Schedule to the 2008 Rules.

INFORMATION REQUIRED FROM PARTIES IN PREPARATION FOR A FINAL HEARING

15. Each party must provide, on a form provided by Tribunal staff and within the time directed by the Tribunal, the following information in preparation for the final hearing:-
 - a. details of what the party believes to be the issues in the proceedings;
 - b. details of what evidence, in addition to that filed with the notice of application or response, the party intends to rely on at the final hearing;
 - c. if they were not available by the time of sending the response to the Tribunal, the views of the child about the issues raised by the proceedings;
 - d. any field in which a party wishes to rely on expert evidence; and where practicable the expert in that field on whose evidence the party wishes to rely; and whether the party wishes the evidence to be provided in the form of an expert report only or whether the party also wishes the expert to attend the hearing as a witness;
 - e. the name, address and occupation (or other description that shows their relevance to the proceedings) of any other witnesses the party wishes to attend the final hearing and the name, address and occupation (or other description that shows their relevance to proceedings) of any other person the party wishes to attend the final hearing (but not give evidence) where it is to be held in private;
 - f. confirmation of whether the party wishes to attend and/or be represented at the final hearing;
 - g. if a party does wish to attend or be represented, confirmation of whether any proposed hearing date is convenient to the party and, if not, details of their availability;
 - h. whether the party or any witness will require the assistance of an interpreter or signer at the final hearing and, if so, details of the language, dialect or type of signing skill required; and
 - i. whether the party has any disabilities that may require adjustments to be made.
16. Unless there is a good reason for not doing so, a party must make any application for a witness summons at least 14 days before the final hearing.
17. If a party requests that the Tribunal admits evidence which has been recorded, whether by audio or visual means, the party must send 5 copies to the Tribunal in advance of the final hearing and within any such time as the Tribunal may have directed.

ATTENDANCE AT PRIVATE HEARINGS

18. Under Rule 26(4) of the 2008 Rules where a hearing, or part of it, is to be held in private the Tribunal may determine who is permitted to attend the hearing or part of it. The following persons (in addition to a party and the child) will normally be entitled to attend the final hearing, or part of it, unless the Tribunal determines otherwise or they are excluded under Rule 26(5) or (6);

- a. The party's representative and witnesses;
- b. Any other person the party has informed the Tribunal they wish to attend the hearing unless the Tribunal determines that any such person should not attend the hearing and has notified that party accordingly;
- c. A parent of the child who is not a party to the application;
- d. The Chamber President and any judge or other member of the First-tier Tribunal (when not sitting as a member of the Tribunal);
- e. A person undergoing training as a judge or other member of the First-tier Tribunal or as a member of staff;
- f. A person acting under the supervision of the Chamber President in the training or supervision of a member of staff;
- g. An interpreter.

19. This Practice Direction is made by the Senior President of Tribunals with the agreement of the Lord Chancellor. It is made in the exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007.