

**FIRST-TIER TRIBUNAL (HEALTH, EDUCATION AND SOCIAL CARE
CHAMBER) RULES 2008**

SPECIAL EDUCATIONAL NEEDS AND DISABILITY APPLICATIONS

1. The First-tier Tribunal (Health, Education and Social Care Chamber) Rules 2008 will apply to all jurisdictions within that chamber, replacing the existing diverse sets of rules. It is intended that they should be simple, flexible and easy to understand. The Tribunal Procedure Committee is consulting on the first draft of the Rules which can be found at www.tribunals.gov.uk.
2. This note sets out matters for which it has been proposed additional provision needs to be made for SENDIST applications i.e. those First-tier Tribunal applications made under section 325, 326, 328, 329 and paragraphs 8 and 9 of Schedule 27 of the Education Act 1996 and section 28I of the Disability Discrimination Act 1995.
3. Such provision could be made (a) by amending the draft Rules or (b) in Practice Directions issued by the Senior President of Tribunals or President of the Health, Education and Social Care Chamber or (c) by standard or case-specific directions to the parties or (d) by general forms and guidance notes issued by the Tribunals Service.
4. As set out in more detail below, such provisions could cover:
 - a. Definitions and Time limits
 - b. The Application Notice
 - c. The Response
 - d. Case Management Hearings
 - e. Bundles
 - f. Strike out of a party's case
 - g. Further evidence – use of recorded (audio or video) evidence.
5. In conjunction with the Tribunal Procedure Committee's consultation on the draft Rules the Senior President of Tribunals has asked for views as to whether, and how, any of these matters could be provided for - with particular consideration to be given to the needs of users. Please also give your views on any other jurisdiction specific provisions that you think may be necessary and details of how these could best be provided for.

DEFINITIONS AND TIMELIMITS GENERALLY

6. The definition of "working day" in Rule 1(4) of the draft Rules differs from the definition in Regulation 2(1) of the Special Educational Needs Tribunal Regulations 2001 and Regulation 2 of the Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002.
7. The current practice could be maintained under Rule 5(2)(a) of the draft Rules, which provides that the time for complying with any rule, practice direction or direction may be extended if the party has shown good reason why it is necessary and the Tribunal considers it to be in the interests of justice.
8. Therefore, where excluding any day from December 25th to 1st January inclusive, the first Monday in May, or any day in August from a calculation would achieve compliance with a time limit that otherwise would not have been complied with, an extension could be granted.
9. Alternatively the definition of "working day" in Rule 1(4) of the draft Rules could be amended to reflect SENDIST practice. Views are sought on how best to maintain current practice.

RULE 18: THE APPLICATION NOTICE

APPLICATIONS UNDER SECTION 325, 326, 328, 329 AND PARAGRAPHS 8 AND 9 OF SCHEDULE 27 OF THE EDUCATION ACT 1996

10. Under Rule 18(b) of the draft Rules the applicant must send an application notice so it is received within 2 months after written notice of the decision was sent to the applicant.
11. Under Regulation 12 of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 the Local Authority's decision must also contain notice of:-
 - a. the parent's right of appeal to the Special Educational Needs Tribunal,
 - b. the time limit within which the appeal must be made,
 - c. the availability of dispute resolution arrangements, and the fact that use of such arrangements does not prejudice the right to appeal.
12. The current President's Statement on "Notification of Right to Appeal: Appeal Time Limits" makes it clear that time does not start to run until these requirements have been fulfilled. Views are sought on how best to maintain current practice.
13. Under Rule 18(2)(h) of the draft Rules a Practice Direction may require the application notice to include further information or documents. Thus, in addition to the information contained in Rule 18(2) of the draft Rules, applicants will be required to include:
 - a. The name and date of birth of the child in respect of whom the application is brought together with the names and addresses of all persons or bodies who share parental responsibility and
 - b. The name of the LA which made the disputed decision and the date upon which the applicant was notified of it.
 - c. If the applicant seeks an order that any child's statement shall be amended, to which part or parts of the statement the application relates and
 - d. 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 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
 - e. Where the application (or appeal) is made under Section 326,328 of or Paragraph 8 and 9 of Schedule 27 to the Education Act 1996, a copy of the child's statement together with, if available, all appendices and supporting documentation and
 - f. Where the notice of application states the name of a preferred school (see above) written confirmation that the applicant has informed the school that he proposed to request that it be named in the child's statement.
 - g. The application must be signed by the parent(s) making the application or by a representative (if authorised in writing by the parent).

APPLICATIONS UNDER SECTION 28I OF THE DISABILITY DISCRIMINATION ACT 1995

14. In addition to the information contained in Rule 18(2) of the draft Rules, applicants will be required to include:
 - a. The name and date of birth of the child in respect of whom the application is brought, together with the names and addresses of all persons or bodies who share parental responsibility and
 - b. Where it is alleged that a school has discriminated against a child, the name and address of the school.

- c. Where it is alleged that a local authority has discriminated against a child, or where the school named above is maintained by a local authority, the name of the local authority.
- d. A description of the child's disability including evidence of a medical or other professional diagnosis if available.
- e. Details of the alleged discrimination, including the date or dates on which it is alleged to have taken place.
- f. The application must be signed by the parent(s) making the application or by a representative (if authorised in writing by the parent).

RULE 19: THE RESPONSE

APPLICATIONS UNDER SECTIONS 325, 326, 328, 329 AND PARAGRAPHS 8 AND 9 OF SCHEDULE 27 OF THE EDUCATION ACT 1996

15. Under Rule 19(2)(d) of the draft Rules a Practice Direction may require the application notice to include further information or documents. In addition to the information contained in Rule 19(2) of the draft Rules the respondent will be required to include:
- a. The views of the child concerning the issues raised by the application, or the reasons why the LA has not ascertained those views and
 - b. Where the application relates to the contents of the child's statement and where the LA has stated that it does not resist the appeal or that it withdraws its opposition to the appeal, these shall not take effect until the LA sends to the Tribunal a written statement of the amendments (if any) to the child's statement which it agrees to make.

RULE 5 and 26: CASE MANAGEMENT POWERS AND HEARINGS

16. The Tribunal will conduct hearings in such a manner as it considers most suitable for the clarification of the issues before it and having in mind the overriding objective set out in Rule 2 of the draft Rules. The procedure to be adopted will be entirely at the discretion of the Tribunal or as directed at any Case Management Hearing. If there is a case management hearing it will be determined by the Tribunal whether the hearing will be on the papers alone, by means of a telephone conference or at an oral hearing.
17. Parties will be required to provide, on a form provided by the Tribunal (secretariat) and within any time stipulated, the following information:-
- a. Details of any direction the party wishes the Tribunal to make.
 - b. Whether the party wishes to attend and/or be represented at the final hearing in accordance with Rule 12.
 - c. Whether the party wishes the final hearing to be in public.
 - d. Whether the party intends to call witnesses and if so the names, descriptions and addresses of the proposed witnesses.
 - e. Whether the party or any witness will require the assistance of an interpreter or signer and if so details of the language, dialect or type of signing skill required.
 - f. Where a party, representative or any witness has a disability which requires any special arrangements other than those specified in (e), details of those arrangements.
 - g. Details of any other person (including the child) the party wishes to attend the whole or any part of the final hearing (other than as a representative).

CHAPTER 2 HEARINGS: BUNDLES FOR FINAL HEARING

18. It will be the responsibility of the Tribunal (secretariat) to prepare and schedule a bundle of all documents relied upon by the parties and to provide copies of the bundle to all parties at least 10 working days before the date set for the final hearing – or within such other time scale as may be determined by a Case Management Hearing and any directions made at that hearing or subsequently.

RULE 8: STRIKE OUT OF A PARTY'S CASE

19. Before striking out a case under Rule 8 of the draft Rules the parties will normally be given 10 working days to provide written representations and will be given the opportunity to request a hearing to determine the matter.

RULE 21: FURTHER EVIDENCE - USE OF RECORDED (AUDIO OR VIDEO) EVIDENCE:

20. Where the Tribunal is requested to admit evidence which has been recorded, whether by audio or visual means, the following procedure will be followed:
- a. Parties may freely submit recorded evidence at the same time as they are entitled to submit written evidence. However, the Tribunal does not have facilities to copy or reproduce audio or video recordings. Such evidence will only be accepted if five copies are sent in advance to the Tribunal.
 - b. As with written evidence submitted in advance, recordings will be considered before the hearing by the Tribunal. They will not normally be played at the hearing.
 - c. Such evidence produced on the day of a hearing may not be able to be heard or seen as the necessary playback equipment is unlikely to be available. This may well lead to an adjournment at the discretion of the Tribunal.

RULE 33, 34, 35: SET ASIDE, APPEAL AND REVIEW

21. Where an application to set aside a final determination is made under Rule 33 of the draft Rules a copy of the application will be sent to each party who shall have 10 working days to make written representations.
22. Where an application for appeal or review is made under Rule 34 of the draft Rules and the Tribunal reviews a decision, the parties will be given notification that fact in accordance with Rule 35(3) and given the opportunity to make representations within 15 working days and/or attend an oral hearing. If the Tribunal decides not to review a decision, or if the application does not result in an amendment to the decision, the procedure set out in Rule 35(6) shall apply.
23. If under Rule 35 of the draft Rules the Tribunal determines on its own initiative that there may be grounds to set aside or amend a decision by review, notice must be given of this intention to each party who shall have an opportunity to make representations within 15 working days, to attend an oral hearing of the review and make representations, or call such evidence as the Tribunal considers just.

COMPOSITION OF TRIBUNALS

24. The composition of individual tribunals in the First-tier Tribunal will be governed by an order made by the Lord Chancellor under paragraph 15 of Schedule 4 of the Tribunals, Courts and Enforcement Act 2007 and so is not a matter for the draft Rules.
25. In so far as the order provides the Senior President of Tribunals with discretion over such issues he will issue a Practice Direction covering composition for all matters that come

before the First-tier Tribunal. The general policy is to maintain the established principles for composition in the different categories of case. Thus, final determinations in special educational needs and disability applications will be made by one judge and two other members (with the qualifications required by Regulation 3 of the Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002).

26. The Practice Direction will also cover the composition of tribunals determining interlocutory matters, any preliminary issue, and applications to set a side, review and for permission to appeal made under the draft Rules.

ANDREW MOSELEY, TCEA IMPLEMENTATION MANAGER
26TH June 2008

RESPONDING TO THE RULES CONSULTATION

The rules consultation finishes on Friday 11 July. Responses to that consultation or to the issues raised in this note should be sent by then to Michaela Strange at:

Tribunals Service

5th Floor

102 Petty France

London

SW1P 2BY

Or by email to Michaela.strange@justice.gsi.gov.uk