



# Education Tribunal for Wales

## Appeal Guidance

## About this guide

The aim of this guide is to help you through the additional learning needs (ALN) appeals process with the Education Tribunal for Wales (ETW). If you would like information about special educational needs (SEN) appeals, please access [the guidance on our previous website here](#).

This guide describes each of the steps in the ALN appeals process, and what help is available. It explains how to make an appeal, but it cannot tell you whether you have a good chance of success.

Tribunal clerks are the staff who process appeals. They answer your letters and telephone calls. They can only answer questions about the administration of your appeal. They cannot give legal advice. This means they cannot give their opinion, or recommend whether you should take a particular action.

### Who this guide is for

This guide is for anyone making an ALN appeal to ETW. This includes:

- children and young people under the age of 25;
- the parents of children of compulsory school age, and younger;
- case friends; and
- representatives.

This guide refers to an application 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.

The Publications Register is a list of all guidance and forms. You can find this [on our website](#).

## About ETW

ETW hears and makes decisions on appeals about the additional learning needs and special educational needs of children and young people, as well as claims of disability discrimination. ETW is independent of government and local authorities, and our decisions are legally binding.

### Overriding Objective and Obligation to Co-operate

The Tribunal's main intention is to deal with cases fairly and justly. The Tribunal expect all parties to cooperate with each other, and the Tribunal, to progress the appeal. This may include exchanging information and documents with other parties, or cooperating with the Tribunal's requests more generally.

### Language Preference

ETW welcomes receiving correspondence and phone calls in Welsh or English. We will respond in whichever language you use, and corresponding in either language will not lead to a delay in our response.

This document is also available in Welsh. Please contact the Tribunal for a Welsh version of this document. You may also submit forms, documents, and make written representations to ETW in Welsh or English.

### Information resources

- [The Education Tribunal for Wales Regulations 2021](#)
- [The Additional Learning Needs Code for Wales 2021](#)
- [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018](#)
- [The Additional Learning Needs \(Wales\) Regulations 2021](#)

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## 1. Deciding whether to make an appeal

### Who can appeal?

If the appeal is about a child of compulsory school age, or under, the following people can appeal:

- 1) The child
- 2) The child's parent
- 3) The case friend of a child who lacks capacity
- 4) The child or parent's representative

If the appeal is about a young person, over compulsory school age, and up to the age of 25, the following people can appeal:

- 1) The young person
- 2) The representative of a young person

Any reference to a parent refers to a person who has parental responsibility or care of the child within the definition of the Education Act 1996.

Case friends can support children who lack capacity, and help them exercise their rights, or act on their behalf. They must submit an application form as a declaration of suitability for the Tribunal's approval. You can find information about the role of a case friend in guidance booklet *Children who lack capacity, and case friends (ETW9)* on [our website](#), or you can contact us and ask for paper copies by post.

A representative may be speaking or acting for young people and parents of children who lack capacity. They can apply to the tribunal and lead cases from start to finish, with due regard to their client's best interests. Further information can be found in the guidance booklet *Young people, or parents of children, who lack capacity (ETW10)* on [our website](#).

### What do I appeal against?

You may appeal against certain decisions made by local authorities or further education institutes (FEI). They will tell you when you have the right to appeal.

If a school maintains your child's individual development plan (IDP), you cannot appeal against the school. You must first ask the responsible local authority to review the situation. The decision of a local authority is the decision you may be able to appeal to ETW.

## What can I appeal about?

You may appeal to the Tribunal about:

A decision by a further education institution or a local authority about whether a child or young person has additional learning needs (ALN)
In the case of a young person, a decision by a local authority about whether it is necessary to prepare and maintain an individual development plan (IDP)
The description of a person's ALN in an IDP (including planned start, review, and end dates)
The additional learning provision (ALP) in an IDP, or the fact that the ALP required is not in an IDP
Whether an IDP says that ALP should be provided in Welsh
The school or institution, or board and lodging, mentioned in an IDP for the purpose of meeting the child's reasonable needs for ALP
The school named in an IDP for admission, or if no school is named in an IDP for admission
A decision by the local authority not to change an IDP when a child, child's parent, or young person has asked the local authority to reconsider an IDP maintained by a maintained school
A decision by the local authority not to take over responsibility for an IDP, which a school maintains, when the child or their parent, a young person or the governing body of that school has asked the local authority to maintain it instead
A decision to stop maintaining an IDP
A refusal to decide a matter because there is no change in needs, or no new information that materially affects the previous decision

### If the appeal is about a detained person (child or young person):

A decision of the home authority about whether a detained person has ALN
A decision of the home authority about whether it will be necessary to maintain an IDP for a detained person when they are released from detention
The description of a person's ALN in an IDP
The ALP in an IDP, or the fact that the ALP is not included in the plan (ALP applicable on release from detention)
Whether an IDP says that ALP should be provided in Welsh

The school or institution, or board and lodging, mentioned in an IDP, to meet reasonable needs for ALP (for admission on release from detention)
the school named in an IDP for the purpose of securing admission (which would be admission to the school on release from detention)
if no school is named in an IDP for admission on release from detention
A refusal to decide whether a detained person has ALN on the basis that the home authority has previously made such a decision, the person's needs have not changed materially and there is no new information materially affecting either that decision or a decision as to whether a plan will be necessary on release

## What decisions can ETW make?

If the Tribunal agrees with an appeal it has the power to make an Order. The Tribunal will write the Order in their decision report.

Depending on the type of appeal, the Tribunal may:

- dismiss the appeal;
- order that a person has, or does not have, ALN of a kind noted in the order;
- order an FEI or local authority to prepare an IDP;
- order an FEI or local authority to change an IDP as they see fit;
- order a school, FEI or local authority to continue to maintain an IDP (with or without changes);
- order a local authority to take over responsibility for maintaining an IDP;
- order an FEI or a local authority to review an IDP; and
- pass the case to an FEI or local authority responsible for the matter. They will need to reconsider whether, having seen the Tribunal decision, it is necessary to make a different decision or take a different action.

## What powers does the Tribunal have in relation to the NHS?

The Tribunal may require an NHS body to provide evidence about the exercise of the body's functions and make recommendations to an NHS body about the exercise of the body's functions.

If the Tribunal makes a recommendation to an NHS body, that body must report to the Tribunal, before the end of 6 weeks beginning with the date on which the recommendation was made. The report must state:

- the action the NHS body has taken or proposes to take in response to the Tribunal's recommendation; or
- why the body has not taken and does not propose to take any action in response to the recommendation.

## What else can I do?

### NHS: Putting things Right

If your disagreement is anything to do with a service provided by the NHS, you may be able to find a quicker resolution by discussing it with them first. [NHS: Putting things right](#) will help you to raise concerns about NHS services, and work towards finding a solution.

### Local authority disagreement resolution services (DRS)

Even if you make an appeal, you should still talk to your local authority to try and reach an agreement with them or an FEI. All local authorities must have independent disagreement resolution services (DRS). The service deals with disputes between parents and children or young people, the local authority, and schools or FEIs in relation to additional learning needs. Your local authority must provide information about how to access its independent DRS.

If you decide to use DRS before you appeal to the Tribunal, we will extend your time limit to apply by 8 weeks. If you decide to use DRS after we have registered your appeal, you may make an application to the president of the Tribunal to pause the appeal process for 8 weeks. You may wish to pause the appeal in case DRS resolves the dispute. Using, or not using, DRS does not affect your right to appeal to the Tribunal.

You may also wish to continue discussing the disagreement with the local authority without DRS. If through these discussions, or through DRS, you come to any agreements with the local authority, it would be helpful if you let the Tribunal know.

### Other means of challenge

In addition to the services above, you could also contact the Children's Commissioner for Wales, who provide advice and a free investigation service, or the Welsh Language Commissioner, if the issue relates to Welsh language provision.

You may also contact the Public Services Ombudsman for Wales, who can consider procedural complaints about a public service provider in Wales, including local authorities and NHS bodies.

## What help can I get?

The local authority should have told you about the following groups that offer advice:

- independent advocacy services;
- voluntary organisations that help people with additional learning needs;
- parents' groups;
- independent parental supporters; and
- parent partnership advisers.

The local authority should also have told you about an Additional Learning Needs Coordinator (ALNCo) who you can work with to try and sort out the issues you are

appealing against. If the child or young person is accessing an NHS service as part of their additional learning provision, a designated education clinical lead officer (DECLO) may be able to assist you with information about their services.

The local authority must always provide you with access to free independent advocacy services. Advocates provide expert advice and assistance to anyone using disagreement resolution services or thinking of coming to the Tribunal. The service is free, and they can support you in many different ways.

You may be entitled to legal aid (public funding) for help in preparing your appeal. 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.

### **How long does it all take?**

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

### **Do I have to pay anything?**

ETW does not charge for its service.

## 2. Making an appeal

### Time-limits

There is an 8 week time limit for appealing to us. We must receive your appeal and case statement no later than 8 weeks from the date when the local authority told you in a letter about its final decision.

Appeals and case statements do not have to be sent at the same time. For example, you can send your application in week 2, and send your case statement in week 7. Please see Step 3 for more information about case statements.

If you decide to use your local authority's disagreement resolution services (DRS) before you appeal to the Tribunal, we will extend your time limit to apply by 8 weeks. This would make the time limit 16 weeks from the date of the local authority's decision letter. It is important that you tell us you have used DRS if you apply in this 8 week extension period.

Your local authority must provide information about how to access its independent DRS.

### How do I make an appeal?

To make an appeal you must complete and send an appeal application to ETW. You can send applications to us in the post or by email. The form is available [on our website](#) or as a printed copy on request.

If you send an application by email, it must contain your electronic signature. If your representative is applying for you, they must use their electronic signature. Alternatively, you can print, sign, scan, and then send a copy by email.

### Do I have to send the appeal application myself?

No, but the person appealing must sign the appeal application. This means you can have help to prepare and send your application, but you must sign it yourself. If you have a representative, they can sign if you have given them permission.

Please be aware that we will only send information about the appeal to the person chosen on the appeal application. You will need to tick one of the boxes on the 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 (the person making the appeal).

If you have a representative, and you want them to receive all the letters and papers for the appeal, you should give their name and address. If you choose your representative, they will receive all the Tribunal papers, and you will not receive any before the hearing; we would only send you the final decision when we issue it. It will be your representative's responsibility to share papers with you.

You must let us know in writing if you decide to stop using your representative, or if their details change.

### What do I need to tell you about?

Our application form asks for the necessary information, but the checklists below will tell you what information must be included.

	X
The name and address of the person making the appeal and, if available, their telephone number and e-mail address.	
The name and date of birth of the child or young person.	
If relevant, the relationship or connection of the person making the appeal to the child or young person.	
The name and address of any representative or case friend for the person making the appeal and, if available, the representative or case friend's telephone number and e-mail address.	
An address and, if available, an e-mail address, where notices and documents for the person making the appeal should be sent.	
The name and address of the local authority or FEI governing body which made the disputed decision.	
The date on which the person making the appeal received written confirmation of the disputed decision.	
The reason or reasons for making the appeal.	
The result wanted.	
The steps already taken to resolve the dispute (if any).	
Any communication requirements and preferences of the child or young person.	

#### If any steps have been taken to resolve the dispute:

Which steps have been taken to resolve the dispute.	
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#### If the appeal is about a child:

The names and addresses of all persons who:	
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<ul style="list-style-type: none"> <li>• have parental responsibility for the child; or</li> <li>• share parental responsibility for the child; or</li> <li>• have care of the child.</li> </ul> <p>If you cannot provide these details, you must explain why.</p>	
<p>Written confirmation that you have told all persons who:</p> <p style="padding-left: 40px;">have parental responsibility for the child, or; share parental responsibility for the child, or; have care of the child</p> <p>that you're making an appeal.</p> <p>If you have not told these people you're making an appeal, please submit reasons why you have not told them.</p>	

**If the person making the appeal would like the Tribunal to make an order that an IDP is changed, the appeal application must say:**

Which section or sections of the IDP the appeal relates.	
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**If the person making the appeal would like the Tribunal to make an order for a placement at a school or other institution, the appeal application must include:**

The name and address of the school or other institution.	
<p>(If it is a maintained school)</p> <p>Written confirmation that you have told the local authority that funds the maintained school that you're asking the Tribunal to consider ordering placement at their school.</p>	
<p>(If it is an independent school)</p> <p>Written confirmation from the proprietor of the independent school that there is a place available at the school, and confirmation you have told them that you're asking the Tribunal to consider ordering placement at their school.</p>	
<p>(If any other institution than a maintained or independent school)</p> <p>Written confirmation that you have established if there is suitable provision available at the institution.</p>	

**What documents should I send with the appeal application?**

Where possible, please include these documents with your appeal application:

A copy of the decision letter you're appealing against.	
A copy of the child or young person's IDP, any documentation attached to the IDP, and copies of the latest reviews.	
<p>A case statement.</p> <p>Please remember, case statements have the same due date as appeal applications; 8 weeks from the date the disputed decision letter was sent to you. Please see Step 3 for more information about case statements.</p>	

### **Do I have to send original documents?**

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

### 3. After we receive your appeal

#### What happens next?

We will register your appeal and send a copy to the local authority or further education institute. We will write to you if we need further information before we can register your appeal.

Once we've registered your appeal, we will tell you to send in your case statement and attendance form before the 8 week time limit is over.

The case statement deadline is the appeal statement deadline; 8 weeks from the date you received the local authority or further education institute's decision letter. If it is close to the deadline, we advise you submit your case statement at the same time as your appeal. If you cannot do this, please contact us as soon as possible for advice.

#### What is a case statement?

Your case statement is the information and evidence that you want us to look at as part of your appeal. You can provide people's views, important documents, letters, and anything else that you think supports your case. Please see our guidance booklet *Appeal case statement guidance for applicants (ETW4)* [on our website](#) for more information.

#### 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.

- the views of the child or young person on the issues raised in the appeal, or
- the reason why you are not providing the child or young person's views.

If the appeal is about a child:

- the views of their parents on the issues raised in the appeal, or
- the reason why you are not providing the parents' views.

It is a rule of the Tribunal's Regulations that you provide these views. The tribunal panel will expect you to include this information in your case statement, unless there is a good reason for not doing so.

#### What will the local authority or FEI do about my appeal?

We will send the local authority or further education institute a copy of your appeal and case statement. They must prepare a response and send it to the tribunal within 4 weeks of receiving your case statement. Their response is their case statement.

### **What if the local authority or FEI does not reply?**

If the local authority or FEI do not send a response in the time allowed, the Tribunal will consider what action it should take. This may include refusing to allow them to take any 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 to both you and the local authority.

If the case goes to a hearing, the tribunal panel will consider the case statements and any documents provided by you and the local authority/FEI beforehand. They will then consider the evidence they hear on the day, and ask questions, to help them make a decision about your case.

### **Withdrawing appeals**

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

## 4. Going to the hearing

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

We will write to you to let you know the date and time for when the hearing will take place as soon as it is booked.

If your appeal is about refusal to assess, we will not need to hold a hearing with witnesses (an oral hearing). The Tribunal will make a decision about your appeal based on the information that you and the local authority submit on paper (a paper hearing). If you feel that an oral hearing is necessary, please ensure that you tick the oral hearing request box on your application form.

### **Where will my hearing be held?**

Your hearing will either be held by video call or in person.

If your hearing is held by video call, we will tell you when we confirm the date. We will also provide joining instructions, tips to ensure the meeting runs smoothly, and check whether you would like to receive a test call a few days before the meeting.

We hold in person hearings within an hour's travelling distance of your home. They're usually held in public buildings, like hotels. The meeting itself will be in a private room.

We only use venues that are fully accessible for people who use mobility aids. Please 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 10am. A hearing may take all day but does not usually continue after 5pm.

If the hearing is being held in person, you should aim to arrive at least 30 minutes before it starts.

### **Who will hear my appeal?**

A panel of 2 or 3 Tribunal members will hear your appeal.

The Tribunal Chair, a lawyer, will lead the hearing. Any other members will be Lay Members. They have specialist knowledge and experience with children with additional learning needs.

### **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 they may have some questions to ask you. You may also want to ask questions yourself.

If you decide not to come to the hearing or send a representative, you are given a chance to provide your thoughts after the case statement deadline. In this instance, additional representations should be submitted to the Tribunal at least 5 working days before the hearing. This allows your comments on the local authority's case statement to be heard at the hearing.

## **Who can come to the hearing?**

### **The child or young person**

The child or young person can attend and give evidence.

It is likely that the panel would only want to talk to a child for part of the hearing. You must arrange for someone to look after children if they do not wish to attend the full hearing. The tribunal staff will not be able to look after children at hearings held in person. Please also note, there may not be a suitable place in the building for someone to look after a child.

### **The case friend or representative of someone who does not have capacity**

Case friends of children who lack capacity, and the representatives of young people, or parents of children, who lack capacity, may attend the hearing.

### **Your representative**

You can invite someone to represent you whether you decide to come or not. That person does not have to be legally qualified.

### **The child's parents**

A parent or a person with parental responsibility in a child's case may come to the hearing, even if they are not the person making the appeal.

### **An observer**

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 or take notes.

### **Witnesses**

You can bring up to two witnesses to the hearing.

Choosing who to bring as a witness can be difficult. The witnesses you choose should be able to discuss the main issues of your appeal that relate to the child or young person. 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 witnesses will need to give a professional opinion with their evidence. They cannot simply support your case. Expert evidence that appears biased can lose credibility.

### **An advocate**

You can bring an advocate to communicate the views and wishes of a child, or remind you of your rights.

### **Who can the local authority or FEI bring to the hearing?**

The local authority can bring a representative, even if they are not legally qualified. They may also call up to two witnesses to the hearing, and bring an observer and an advocate. We will write to you before the hearing to confirm who is attending the hearing.

### **What expenses can I claim?**

You and your witnesses can claim travel expenses to come to the hearing. If you're bringing a friend or a relative to look after your child, you will be able to claim their travel expenses too.

You should use public transport where possible (bus or standard-class rail travel). If you travel by car, you can claim a fixed amount for mileage. We cannot pay for car parking and tolls.

We will only pay for taxi fares if public transport is not available, or if you have particular needs. You must tell us before using a taxi if you want to claim travel expenses. We will need to authorise any taxi fare claims before you travel.

Your witnesses can claim a fixed amount for loss of earnings.

### **Further information on hearings**

For further information, please see the guidance booklets *Hearing guidance (ETW 16)*, *Attendance form guidance for applicants (ETW14)*, *Witness expenses guidance for applicants (ETW18)* [on our website](#).

## 5. The Tribunal's decision

### When will I know the Tribunal's decision?

We will send you the decision and reasons 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 or FEI.

### How long does the local authority have to carry out an order?

If the Tribunal agrees with your appeal it has the power to make an order. The local authority or FEI must carry out the order within a certain time limit, starting from the day after we issue the decision. Most time limits are 7 weeks for local authorities, and 35 term time days for FEIs, but some orders must be followed immediately. For further information, please see the guidance booklet *Appeal orders (ETW29)* on [our website](#).

Timescales also apply when the local authority or FEI tell us they do not oppose the appeal.

### What if the local authority does not follow the decision?

If the local authority or FEI does not keep to the order in the time we say, you may have to apply to the High Court to enforce it.

Alternatively, you may complain to the Department for Education and Public Services:

Additional Learning Needs Branch  
Support for Learners Division  
Welsh Government  
Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ

[additionallearningneedsbranch@gov.wales](mailto:additionallearningneedsbranch@gov.wales)

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

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed  
CF35 5LJ

[www.ombudsman.wales](http://www.ombudsman.wales)

0300 790 0203

### **What can I do if I am not happy about your decision?**

If you think there is a technical problem with the decision, or how we made it, 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 days of the date we issued the decision. The Tribunal may refuse to accept a request to review, or ask for all parties' views to make a further decision.

If you think that the decision is wrong on a point of law you can appeal to the Upper Tribunal (Administrative Appeals Chamber). To do this, you must first apply to us for permission to appeal. We must receive the request for permission to appeal no more than 28 days from the date on the letter which we sent you with the decision. If we do not give permission, you may still apply to the Upper Tribunal for permission, but they will not consider the application unless you apply to ETW for permission first. You will need permission to appeal from either ETW or the Upper Tribunal before you can submit the appeal.

For further information, please see the guidance booklet *Permission to appeal to the Upper Tribunal: Guidance (ETW22)* [on our website](#).