



Education Tribunal for Wales

Claim Guidance

About this guide

The aim of this guide is to help you through the claim process with the Education Tribunal for Wales (ETW). It describes each of the steps in the process, and what help is available. This guide explains how to make a claim, but it cannot tell you whether you have a good chance of success.

Tribunal clerks are the staff who process cases. They answer your letters and telephone calls. They can only answer questions about the administration of your case. 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 a claim 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
- other representatives.

This guide refers to an application form, which you will need to complete if you want to make a claim 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.

Language Preference

ETW welcomes receiving correspondence and phone calls in Welsh or English. We will respond in Welsh to any correspondence received in Welsh. Corresponding in Welsh 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.

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 case. This may include exchanging information and documents with other parties, or cooperating with the Tribunal's requests more generally.

Information resources

- [The Equality Act 2010](#)
- [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 a claim

What is a disability?

According to the Equality Act 2010, a person has a disability if:

- they have a physical or mental impairment; and
- the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

Common conditions, or conditions that are only temporary (such as hay fever or broken bones) are excluded from the definition. Wearing glasses would not constitute a disability if that was the only difficulty a person faced. A person with glasses would have a disability if they had great difficulty carrying out everyday tasks, even whilst wearing glasses.

Substance addictions are excluded from the definition.

What aspects of Education does the Equality Act cover?

Schools must not discriminate, harass or victimise a person on grounds of disability.

It is unlawful for schools to disfavour or single out pupils, due to their disability, in:

- arrangements made for deciding the admission of pupils;
- the terms on which it makes admission offers;
- not admitting a person as a pupil;
- permanent or fixed term exclusions;
- lunch time exclusions;
- the way it provides education;
- the way it provides pupils with access to benefits, facilities or services in school;
- not providing a pupil with access to a benefit, facility or service in school;
- subjecting a pupil to any detriment in regards to benefits, facilities or services; and
- in not providing education for a pupil.

The law applies to what happens at break, lunch-times and lessons. It also covers school related activities, such as school clubs, after school clubs, sports activities, and school trips. The school has a duty to make reasonable adjustments that help to include all students.

What is Disability Discrimination?

Disability discrimination occurs when someone treats another person unfavourably because of a disability.

Disability discrimination can also occur when a rule or way of doing things disadvantages disabled people. If a school policy makes it difficult for a disabled pupil to take part in a school activity, that policy may be discriminatory.

What are the types of Discrimination?

The Equality Act 2010 protects people who have (or have had) a disability against different types of discrimination.

The different types of discrimination are:

- direct discrimination;
- indirect discrimination;
- discrimination arising from disability;
- failure to provide a reasonable adjustment for a disabled child;
- harassment; and
- victimisation.

Direct discrimination occurs when someone treats another person unfavourably because of a disability. It is also direct discrimination if they mistakenly think the person has a disability. If someone treats another unfavourably because of their association with a disabled pupil, this is direct discrimination too.

Indirect discrimination occurs when a rule, policy or practice has the effect of putting pupils with a particular disability at a disadvantage compared with non-disabled pupils. The school must be able to justify any rule, policy or practice that disadvantages pupils this way.

Discrimination arising from disability occurs when a school treats a disabled pupil unfavourably because of a reason related to their disability. If the school or local authority can show that they did not know about the pupil's disability, or could not reasonably have been expected to know, it is not discrimination.

Failure to provide a reasonable adjustment for a disabled child occurs when a school does not take reasonable steps to avoid disadvantage experienced by disabled pupils. This requires the school to take steps in advance of the pupil attending the school.

The school has a duty to take positive steps to ensure that a disabled pupil can fully participate in the education and other services that the school provides. The school's duty to make reasonable adjustments includes providing auxiliary aids and services. These include specialised computer equipment, adapted desks or speech and language therapy. An auxiliary aid or service is anything which

provides additional support or assistance to a disabled person. It does not require a school to remove or alter a physical feature of the school.

Disability related harassment occurs where a pupil experiences unwanted behaviour, related to a disability, which has the purpose or effect of violating a person's dignity. The behaviour may be hostile, degrading, humiliating or offensive to the pupil.

Disability related victimisation occurs when a school treats a pupil unfavourably because they have taken action under the Equality Act. This includes unfavourable treatment of a pupil who is considering taking action, or is supporting a person taking action.

When can discrimination be justified?

Discrimination may be lawful if the school or local authority can justify it. To do so, they must show that there was a lawful and genuine reason for the treatment. They must also prove that their response was fair, balanced and reasonable. This applies to cases of indirect discrimination and discrimination arising from disability.

What about the duty to make reasonable adjustments?

Schools and local authorities must take reasonable steps to make sure that disabled pupils are not put at a significant disadvantage in comparison to non-disabled pupils. For example, a reasonable step may be changing the way schools do things so that disabled students can join in an activity.

Schools do not have to alter buildings as part of a reasonable adjustment. This is because schools and local authorities have a duty under the Equality Act 2010 to improve access to buildings over time instead.

Can a child without a disability be discriminated against?

People without a disability are protected against certain types of unlawful conduct by the Equality Act 2010.

- **Direct discrimination based on association** occurs when a pupil is treated unfavourably because of their association with a person who does have a disability.
- **Direct discrimination based on perception** occurs when a pupil is treated unfavourably because it has been mistakenly thought that they have a disability.
- **Disability related harassment** occurs where a pupil experiences unwanted behaviour related to a disability which has the purpose or effect of violating a person's dignity. The behaviour may be hostile, degrading, humiliating or offensive to the pupil.

- **Disability related victimisation** occurs when a school treats a pupil unfavourably because they have taken action under the Equality Act. This includes unfavourable treatment of a pupil who is considering taking action, or is supporting a person taking action.

What claims can ETW deal with?

ETW deals with most disability related discrimination, harassment and victimisation claims against schools in Wales. We cannot deal with claims about:

- maintained school admission decisions; and
- permanent exclusions from maintained schools.

A maintained school is a school that a local authority looks after and pays for.

Admission appeal panels, and exclusion appeal panels hear cases related to these cases.

Obtaining information about the case

You can try to get information about your case from the school or local authority involved. They should be able to provide the reasoning for their decisions in writing.

The Equality Advisory and Support Service have template letters that might help you. They can also offer impartial advice and other resources.

What else can I do?

The schools complaints procedure

It is usually in everyone's best interests to try and resolve disagreements in the most straight forward way possible. Schools are likely to have a complaints procedure that deals with complaints of discrimination, harassment or victimisation. Schools will be able to tell you more about their complaints procedure.

Local authority dispute resolution services

Local authorities in Wales must have independent dispute resolution services (DRS). These services can deal with disputes in relation to additional learning needs. In some cases, the service is also available to help resolve other disputes. Your local authority will be able to tell you more about this service and whether it is available to you.

The school and local authority may also agree to use other independent mediation or conciliation service you identify.

Even after you have submitted a claim, you might find it useful to have discussions with the school or local authority involved in your case. It is sometimes possible to resolve disputes in this way, or to agree certain aspects of your claim before the

Tribunal hearing. If through these discussions, or through DRS, you come to any agreements, it would be helpful if you let the Tribunal know.

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.

Independent advocacy services 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 case. 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.

What can ETW do to put things right?

ETW can order education providers to take action and make up for any opportunities that your child has missed. They can also help prevent discrimination against disabled pupils in the future.

Examples might include:

- training for school staff and governors;
- writing up new guidance for staff and governors;
- making amendments to school or local authority policies;
- providing extra tuition to make up for lost learning;
- apologising to a pupil; or
- providing trips or other opportunities to make up for activities that your child may have missed.

ETW cannot order payment of financial compensation.

How long does it all take?

The process of making a claim, from when we receive your claim to when we make a final decision, usually takes three 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 a claim

Time-limits

There is a six month time-limit for making a claim to us. We must receive your claim within six months of the alleged discrimination. If you use or are referred to the Equalities and Human Rights Commission (EHRC) Conciliation Service before the six months is up then we may extend the time-limit for making a claim. It is important that you ask ETW about granting an extension before the six month time-limit is up.

If you decide to use your local authority's disagreement resolution services (DRS) before you make a claim to the Tribunal, we will extend your time limit to apply by 3 months. This would make the time limit 9 months from the date of the alleged discrimination. It is important that you tell us you have used DRS if you apply in this 3 month extension period.

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

Who can make a claim?

Those eligible to make a claim are:

- Children
- Parents
- A person who has parental responsibility or care of the child within the definition of the Education Act 1996.

Case friends can also make claims on behalf of a child. Case friends must submit a declaration form. You can find guidance about the role of a case friend and copies of all guidance and forms on our website.

How do I make a claim?

To make a claim you must complete and send a claim 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.

Your claim application must be signed. 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 claim application myself?

No, but the person claiming must sign the claim 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 claim 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 claim. If you do not tick a box, we will send the information to the first named person (the person making the claim).

If you have a representative, and you want them to receive all the letters and papers for the claim, 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.

Who is the claim against?

Your claim is against the Responsible Body. This can vary depending on the type of case. It is usually either the school's governing body, a local authority or the proprietor of the school concerned. The Responsible Body is the organisation that is responsible for the school.

You don't need to tell us who the Responsible Body is. You only need to tell us the name and address of the school, or place of education where the alleged discrimination took place. If it is a maintained school (looked after by the local authority) you also need to tell us the name of the local authority. You cannot name an individual person, like the head-teacher, as the Responsible Body.

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.

<p>The name and address of the person making the claim.</p> <p>If you are not the child or young person, you must state your relationship or connection to them.</p> <p>If available, please include a telephone number and e-mail address.</p>	
<p>The name and date of birth of the child or young person.</p>	
<p>A description of the child or young person's disability.</p>	
<p>A description of any communication requirements and preferences of the child or young person.</p>	
<p>(If the claim is about a child)</p> <p>The names and addresses of 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>If you cannot provide these details, you must explain why.</p>	
<p>(If the claim is about a child)</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 a claim.</p> <p>If you have not told these people you're making a claim, please submit reasons why you have not told them.</p>	
<p>The name and address of any representative or case friend appointed by the person making the claim.</p> <p>If available, please include their telephone number and e-mail address.</p>	
<p>An address where notices and documents for the person making the claim should be sent. This is usually your address, or your representative's.</p>	

<p>We handle most cases by computer. If you are happy for us to contact you or send documents by email, please include your email address too.</p>	
<p>The name and address of the school or local authority which made the disputed decision.</p> <p>If a maintained school made the decision, you must state which local authority maintains the school.</p> <p>A maintained school is a school that a local authority looks after and pays for. They're often referred to as state schools.</p>	
<p>Details of the decision that your claim relates to.</p> <p>This is the decision which you think discriminates against the child or young person.</p> <p>You must also state the date or dates that the decision took place.</p>	
<p>The reason for making the claim.</p> <p>You must explain why you think it is discriminatory. It helps to explain how the decision affects the child or young person. Comparing their situation to other pupils may assist you.</p>	
<p>The result you would like to see.</p> <p>Please state what you would like to see happen if the Tribunal agrees with your claim.</p>	
<p>The steps, if any, already taken to resolve the dispute.</p> <p>This may be discussions with the school, using a local authority dispute resolution service, or any other way you have tried to resolve the problem.</p>	
<p>The signature of the person making the claim.</p>	

What documents should I send with the claim application?

If you have evidence of a medical or other professional diagnosis relating to the pupil's disability, please send this with your claim application.

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

Other information

If you are also submitting an appeal application against a local authority too, you can request that both your claim and your appeal are heard together in the same hearing.

3. After we receive your claim

What happens next?

We will register your appeal and send a copy to the responsible body. We will write to you if we need further information before we can register your appeal.

Once we've registered your claim, we will tell you to send in your case statement and attendance form. **You will have 30 working days to submit them.**

What is a case statement?

Your case statement is the information and evidence that you want us to look at as part of your claim. You can provide people's views, important documents, letters, and anything else that you think supports your case. Please see our guidance booklet *Claim 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 responsible body do about my appeal?

We will send the responsible body 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 responsible body does not reply?

If the responsible body does 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 responsible body.

If the case goes to a hearing, the tribunal panel will consider the case statements and any documents provided by you and the responsible body 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 claims

If you decide that you no longer want to continue with the claim then you can withdraw it at any stage in the process. To withdraw a claim, please tell us in writing, by email or in a letter. You can also fill and return our withdrawal form.

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.

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, and tips to ensure the meeting runs smoothly.

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 claim?

A panel of 3 Tribunal members will hear your appeal.

The Tribunal Chair, a lawyer, will lead the hearing. The other two members are known as 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 respondent's case statement to be heard at the hearing.

Who can come to the hearing, other than the person applying?

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.

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 claim.

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 claim 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 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.

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 responsible body.

Will you confirm that there was discrimination?

If we decide that there was unlawful discrimination we will say so in our decision.

What can the Tribunal tell the responsible body to do?

We can order the responsible body to do anything reasonable to put right the discrimination. The law does not allow us to order financial compensation.

We can order actions that will help make up for any opportunities that your child has missed, or prevent future discrimination.

Examples include:

- training of school staff;
- drawing up new guidance for staff;
- changes to school policies;
- extra tuition, to make up for lost learning;
- changing the location of lessons or activities (but not changing physical premises);
- a written apology to your child; and
- trips or other opportunities to make up for activities that your child may have missed.

How long does the responsible body have to carry out the order?

We will tell the responsible body to carry out the order within a given time. They must do this by law. If they do not, the tribunal has no powers of enforcement. There are other steps you may take to enforce the tribunal's order if the responsible body does not comply.

What if the responsible body does not follow the decision?

If the responsible body 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

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

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.