

EDUCATION TRIBUNAL FOR WALES

PRACTICE DIRECTION

Introduction

1. In this Practice Direction “the 2018 Act” refers to The Additional Learning Needs and Education Tribunal (Wales) Act 2018; “the 1996 Act” refers to the Education Act 1996; “the 2021 Regulations” refer to the Education Tribunal for Wales Regulations 2021; the 2012 Regulations” refers to the Special Educational Needs Tribunal for Wales; the President refers to the President of the Tribunal and “the Tribunal” refers to the Education Tribunal for Wales; the SENTW Practice Direction refers to the Practice Direction PD/06/2021 made on 27 June 2021.
2. The SENTW Practice Direction applied to the Special Educational Needs Tribunal for Wales until further notice. The 2018 Act renamed the Special Educational Needs Tribunal for Wales the Education Tribunal for Wales.
3. In order to continue the benefits of the SENTW Practice Direction under the Education Tribunal for Wales the President has decided that the Practice Direction shall continue in force in its current form now under the Education Tribunal for Wales until further notice. This Practice Direction applies to the 2021 Regulations and the 2012 Regulations.

Directions

Appeal Hearings

4. The bundle for Tribunal appeal hearings must include, where available, the documents as set out at items A to K below;
 - A. The appeal application, any amended grounds of appeal and the current Statement (if applicable)
 - B. Both parties Statement of Case
 - C. The LA decision letter
 - D. Any requests for changes made by a party.
 - E. Tribunal orders and any documents ordered to be filed by the Tribunal
 - F. Any relevant correspondence between the parties. Please note that this should not include correspondence relating to dates of meetings or other matters that are not directly pertinent to the appeal/claim.
 - G. Relevant professional reports which have been prepared no longer than three years from the date of the appeal
 - H. Annual review reports which are relevant to the issues to be decided by the Tribunal for the last two years
 - I. Any assessment report and offer of a place (if applicable) from the educational establishment named in Part 4 of the Statement and also (if applicable) details of the cost of the proposed educational placement and the cost of transport for the young person to the educational placement.
 - J. Final working document and /or an agreed list of outstanding issues
 - K. Statements of witnesses to be given in evidence

5. The bundles shall, for items D to K, consist of no more than 300 pages. This page limit is not a target and many cases will not require this number of pages. Items A to C are excluded from the 300 page limit as it is important that the parties to the hearing have the opportunity to put their case fully.
6. If one or more of the parties consider that it would be impossible to produce the evidence that is required for the hearing within the 300 page maximum on the basis that it is not consistent with the overall objective of dealing fairly and justly with cases, then the party or parties holding that view should make an application to the Tribunal to extend the page limit giving clear reasons why an increase is required and why the inclusion of the documents is necessary for the fair hearing of the matter.

Claim Hearings

7. The bundle for Tribunal claim hearings must include, where available, the documents as set out at item 1 to 6 below;
 - 1) The claim application, any amended grounds of the claim and the current Statement (if applicable)
 - 2) The Responsible Body's response to the claim and any supplementary or amended response
 - 3) Any requests for changes made by a party
 - 4) Tribunal orders and any documents ordered to be filed by the Tribunal
 - 5) Any relevant correspondence between the parties
 - 6) Statements of witnesses to be given in evidence
8. The bundles shall, for items 4 to 6, consist of no more than 200 pages. This page limit is not a target and many cases will not require this number of pages. Items 1 to 2 are excluded from the 200 page limit, as it is important that the parties to the hearing have the opportunity to put their case fully.
9. If one or more of the parties consider that it would be impossible to produce the evidence that is required for the hearing within the 200 page maximum on the basis that it is not consistent with the overall objective of dealing fairly and justly with cases, then the party or parties holding that view should make an application to the Tribunal to extend the page limit giving clear reasons why an increase is required and why the inclusion of the documents is necessary for the fair hearing of the matter.

Appeal and Claim Hearings

Appellant or Claimant not represented

10. Where the Appellant or the Claimant is not represented, following submission of the Appellant or Claimant's case statement to the Tribunal and Respondent, the bundles shall be prepared in electronic pdf format by the Respondent and the following rules shall apply:-
 - a. The Appellant/Claimant shall co-operate with the Respondent in the preparation of the bundle by providing any documents requested by the Respondent for inclusion in the bundle. In the event of a failure of co-

operation to ensure that relevant documents are provided within the Bundle, the Panel conducting the hearing may draw such inferences, as appropriate, (including, for the avoidance of doubt, adverse inferences) from the failure when determining the appeal/claim.

- b. In the circumstances of paragraph 9 the Respondent shall ensure that all documents included in the bundle are complete, legible and not duplicated. It is the responsibility of the Respondent to obtain complete and legible documents. An index shall be prepared giving the details of each of the documents and detailing the type of document, the author along with their position and the date of the document. Further information about producing the index are detailed in the Index section below.
 - c. Prior to finalisation of the bundle, a draft bundle shall be sent within 5 working days of the Respondent's Case Statement to the Appellant/Claimant to be agreed. If no response is received from the Appellant/Claimant agreeing the bundle within 5 working days of being sent, the Respondent shall be entitled to presume that the bundle is agreed. Once agreed it must be submitted by the Respondent to the tribunal within 5 working days of being agreed.
 - d. The Tribunal shall amalgamate the bundles and index received, number and finalise the index and send copies of the electronic pdf bundle to the parties at least 10 working days prior to the hearing.
11. If the Bundle submitted does not comply with this Practice Direction the parties shall be informed by the Tribunal Secretariat of the non-compliance and within 3 working days of such notification the Respondent must ensure that that the Bundle is made compliant. Failure on the part of the Respondent to comply with this obligation may lead to a debaring order against it if the justice of the case so demands.

Appellant or Claimant represented

12. Where the Appellant or the Claimant is represented, each party shall prepare their own bundle of documents in electronic pdf format and the following rules shall apply:-
- a. Each party shall ensure that all documents included in their own bundle of documents are complete, legible and not duplicated. It is the responsibility of each party to obtain complete and legible documents. Each party shall prepare its bundle of documents, giving the details of each of the documents and detailing the type of document, its date and the author along with their position. Further information about producing the index are detailed in the Index section below.
 - b. The Appellant/Claimant shall provide the Respondent and the Tribunal with their bundle of documents in electronic pdf format by no later than 5 working days after the case statement period. This is to enable the Respondent to remove any documents from their own bundle of

documents that are duplicated in the Appellant/Claimant's bundle of documents. In the event of the Appellant/Claimant's representative failing to provide the Respondents with their bundle of documents within the said timescale, the Appellant/Claimant shall be debarred from presenting any documents to the Tribunal Panel at the hearing.

- c. The Respondent shall provide the Tribunal with their bundle of documents in electronic pdf format by no later than 10 working days after the case statement period. In the event of the Respondent failing to provide the Tribunal with their bundle of documents within the said timescale, the Respondent shall be debarred from presenting any documents to the Tribunal Panel at the hearing.
 - d. The Tribunal shall amalgamate the bundles and indexes received, number and finalise the index and send copies of the electronic pdf bundle to the parties at least 10 working days prior to the hearing.
13. If the bundle of documents submitted by a party does not comply with this Practice Direction the party at fault shall be informed by the Tribunal Secretariat of the non-compliance and within 3 working days of such notification, the party must ensure that that the bundle of documents is made compliant. Failure on the part of any of the parties to comply with this obligation may lead to a debarring order against it if the justice of the case so demands.

Index

14. The index is to have the following headings in the following order to ensure consistency:

Page Number / Document Title / Author / Date

15. Parties will be expected to provide an interactive index which links to the documents contained within the bundle. In order to assist with this, instructions on how to do so will be provided by the tribunal with the letter of registration.
16. The Index will appear at the front of the bundle, if being produced by the Respondent in cases where the Appellant/Claimant is not represented and by both parties for their respective bundles where the Appellant/Claimant is represented.

Rhiannon Walker
President Education Tribunal for Wales

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