



How to claim against disability discrimination in schools - a guide for parents

About this guide

The aim of this guide is to help you through the claims process.

The First-tier Tribunal Health Education & Social Care Chamber (Special Educational Needs and Disability) is part of the system of courts and tribunals which decides appeals and claims. At the tribunal we hear appeals against decisions of local authorities about children with special educational needs and claims of disability discrimination against schools.

This guide explains what a claim for disability discrimination involves. It describes each of the steps in the process. Staff who process the claims through the tribunal office are called tribunal clerks. They will handle your letters, telephone calls and queries about the administration of your claim. **They cannot give legal advice.** Your claim will be decided by a panel which could consist of a tribunal judge and up to two other tribunal members who have knowledge and experience of children with special educational needs and disability.

Using this guide

The guide is lengthy, because it provides information on each stage of the claims process.

You may prefer to use it as a manual, checking each step as your claim moves forward, or for information on individual aspects of the procedure. The guide is, however, only a summary of the law. The tribunal makes decisions on claims with reference to legislation, case law and statutory guidance.

This guide refers to the claim form, which you will need to complete if you want to make a claim to the tribunal. The form is available on our website at www.justice.gov.uk/tribunals/send or as a printed copy on request.

Contacting us

If you need to contact us you can do so in the following ways.

In writing to:

HM Courts & Tribunals Service
Special Educational Needs and Disability
1st Floor Darlington Magistrates Court
Parkgate
Darlington DL1 1RU

By phone: 0300 303 5857

By fax: 0870 739 4017

by email: send@justice.gov.uk

Section 1 – Making a claim

Please read this section carefully. It will help you decide whether you can make a claim.

The tribunal can hear a parent or parents' claims of disability discrimination in schools and academies in England.

By schools we mean schools, nurseries and pupil referral units maintained by a local authority, independent (private) schools and academies (which includes free schools). We cannot hear claims against private nurseries, unless they form part of a school, or against further education colleges. We cannot hear claims against organisations which are not schools even if they have hired or arranged to use a school's premises.

In addition to the child's birth parents, a parent includes anyone who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives. No-one apart from a parent can make a claim. This means the child cannot make the claim, even if they are 18 or older.

What is a disability?

Disability is one of the 'protected characteristics' within the provisions of the Equality Act 2010.

The Act also relates to discrimination arising from other protected characteristics which are age, race, religion or belief, sex, sexual orientation, pregnancy and maternity, marriage and civil partnership and gender reassignment. This tribunal cannot consider claims relating to these other characteristics.

The Act defines a disability as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.' Further information is given in the Annex at the end of this guide.

Unless you allege discrimination by association or perception (see below), a claim for disability discrimination **must** clearly demonstrate the nature of the child's disability.

What are the school's duties?

Schools must not discriminate against a pupil because of disability in relation to:

- admissions;
- the provision of education and access to any benefit, facility or service; or
- exclusions.

It is also unlawful for a school to harass or victimise an applicant or pupil because of disability.

In some circumstances the parent of a former pupil may also claim for discrimination.

Admissions

A school must not discriminate because of disability:

- in the arrangements it makes for deciding who will get a place in the school including any rules it applies when the school is 'oversubscribed' (more people apply than there are places);
- in the terms on which pupils are offered a place at the school; and
- by refusing to accept an application because of disability.

The tribunal cannot hear a claim for a refusal to admit a pupil to a local authority or other state funded school (i.e. an academy or free school). This is because there are other appeal arrangements available to the parent, and these are available whether or not the child is disabled. The local authority or the school will provide the details of how to appeal in these cases.

The tribunal can hear a claim relating to admission to a private school.

The tribunal cannot hear a claim for failure to name a school in a pupil's Education, Health and Care Plan. However, you may be entitled to appeal to the tribunal against this decision. You should contact your local authority for further information, or request our How to appeal against a special educational needs decision booklet.

Provision of education and access to a benefit, facility or service

A school must not discriminate in the education and services it provides for disabled pupils. This covers all aspects of school life and the teaching provided to pupils (but it does not include adult education that may take place on the school premises). It also includes what happens at lunchtime and other breaks, and activities such as after-school clubs, school trips or school orchestras.

Exclusions

A school must not discriminate against a pupil by excluding them from the school because of disability. This applies whether the exclusion is permanent or for a fixed term and it includes lunchtime exclusions. In addition, schools must not discriminate against a pupil by 'informally excluding' them because of a disability.

The tribunal has always been able to hear cases involving permanent exclusion by a private school but not from local authority maintained or other state-funded schools. However, if the exclusion occurred on or after 1 September 2012 the tribunal can now hear the claim.

A parent is also entitled to apply to an independent review panel in these circumstances, and this panel can direct a school to reconsider its decision, though it cannot order the reinstatement of your child. You can apply for a panel to review the exclusion whether or not your child is disabled. Details of how to apply for a panel should have been given to you by the school. If you make an application to the independent review panel the tribunal will stay (put on hold) any claim relating to the permanent exclusion until the outcome of the review is known.

What is an expedited (fast-track) claim?

If your child has been permanently excluded from a school, it is important that any claim which might result in an order for reinstatement is heard quickly. The tribunal will apply an expedited timetable in such a case, so the decision can be reached in no more than six weeks. There are a number of references to the expedited timetable in this guide as the procedures will be different. **The expedited timetable does not apply while the exclusion is being considered by an independent review panel (see below).**

What is disability discrimination?

Disability discrimination may be:

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

Discrimination arising from disability

This occurs when a school treats a disabled pupil unfavourably because of something connected with that pupil's disability.

However, the school may have had a good reason for that treatment. It will not be unlawful if it was a proportionate means of achieving a legitimate aim or the school did not know, and could not reasonably have been expected to know, that the pupil was disabled.

Failure to provide a reasonable adjustment for a disabled child

The school has a duty to take reasonable steps to avoid disadvantage experienced by disabled pupils. This can require steps to be taken in advance of the pupil attending the school. Discrimination occurs when a school has not complied with its duty to take positive steps to ensure that a disabled pupil can fully participate in the education and other services which the school provides.

From 1 September 2012, the school's duty to make reasonable adjustments includes a requirement to provide auxiliary aids and services, such as specialised computer equipment, adapted desks or speech and language therapy. It does not require a school to remove or alter a physical feature.

Matters such as cost, health and safety requirements, and the need to maintain standards, are some factors that may be taken into account when considering whether a particular step is reasonable.

Direct discrimination

This occurs when a school treats a pupil less favourably than it treats or would treat others because of a disability. This requires consideration of how other pupils would have been treated in similar circumstances. A pupil who is treated less favourably because of the

pupil's association with another person who is disabled may also claim, as may a pupil who is treated less favourably because the school mistakenly thinks that the pupil is disabled. This is sometimes known as discrimination by association and discrimination by perception respectively.

Certain types of different treatment can sometimes be permitted: for example, treating a disabled person more favourably or applying permitted admission criteria.

Indirect discrimination

This occurs when a school puts in place a general requirement such as a policy or rule which puts or would put a disabled pupil at a particular disadvantage compared with others. This may be lawful if the requirement is a proportionate means of achieving a legitimate aim.

Harassment

This occurs when a school engages in unwanted conduct related to a disability which has the purpose or effect of violating a pupil's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the pupil. The pupil concerned may not have a disability but might be associated with someone who has, or is wrongly perceived as having a disability.

Victimisation

This occurs when a school does something which is disadvantageous to a pupil because either the pupil or the pupil's parent or sibling takes, or is thought to be about to take, action under disability discrimination law. This extends to pupils who are associated with, or perceived to have, a disability.

A claim cannot be made if the circumstances arose because the pupil acted in bad faith.

What is a disability?

The Equality Act 2010 defines a disability as a physical or mental impairment which has a substantial (more than minor or trivial) and long-term adverse effect (to last for at least a year or for the rest of their life) on the disabled person's ability to carry out normal day-to-day activities. (Please see the Annex at the end of the guide for a fuller definition).

Some conditions are automatically treated as a disability. These are cancer, HIV and multiple sclerosis, and certified or registered partial sight or blindness.

What conditions are not covered by the definition?

Wearing glasses does not constitute a disability if that is the only difficulty. Conditions that happen regularly or are only temporary, such as hay fever or broken bones, are excluded as are addiction to alcohol, tobacco and drugs.

Can a child without a disability ever be the subject of discrimination?

A pupil may have suffered certain types of discrimination if they are associated with a person who has a disability or perceived wrongly to have a disability. This is explained above (see direct discrimination).

Do I have a valid claim?

This guide deals with how to make a claim. It cannot tell you whether you have a good chance of success. Tribunal clerks will be happy to answer queries about the administration of your claim as it proceeds but they cannot give you an opinion about whether you are likely to win or lose, or whether you should take a particular action or step.

Mediation

Before making a claim you may wish to consider mediation as an alternative way of resolving your dispute. Local authorities must have in place independent disagreement resolution services to deal with disputes. In some cases, these services are available to help to resolve other types of dispute. If mediation is undertaken and no agreement is reached, a tribunal claim can still be made, as long as it is within the six month time limit outlined later.

Can I get help if I decide to make a claim?

You may be entitled to assistance in preparing your claim. The Equality Advisory and Support Service (EASS) can provide expert information, advice and support on discrimination, and whether public funding may be available.

Telephone: 0800 444 205

Textphone: 0800 444 206

www.equalityadvisoryservice.com

Opening hours: 09:00 - 20:00 Monday to Friday 10:00 - 14:00 Saturday

Post: FREEPOST, Equality Advisory Support Service, FPN4431

The Law Society or your local Citizens Advice Bureau may be able to provide the names of solicitors who are experienced in these matters.

What is likely to be involved?

There is no fee for making a claim to the tribunal. The tribunal can make a contribution towards out of pocket expenses in attending your hearing, such as travel costs. In certain circumstances, the tribunal may consider a claim by either you or the school against the other party for any costs incurred in the tribunal proceedings.

From start to finish, claims typically take four to five months depending on their nature and complexity. (However, in cases of permanent exclusion where reinstatement is requested by the parent, the timetable is a lot shorter.)

Usually the parties only attend once, at the final hearing. Hearings normally start at 10am at a hearing centre appropriate for both parties, although hearings may be by video or with some of the participants joining by video or phone, you should aim to be there at least half an hour before the start time.

Preparing your claim will involve you in gathering the evidence to support your case.

Section 2 – Starting a claim

Time limits

There is a time limit for making a claim. **The claim must be received by the tribunal within six months of the alleged discrimination.**

If the acts or circumstances giving rise to the claim have continued for some time, or arise from certain specific circumstances, such as a contract, the claim must be received by the tribunal within six months of the most recent alleged act or omission. As part of its determination, the tribunal may need to decide whether different acts were part of an ongoing course of conduct. The tribunal may ask you for further information or reasons why the acts you are complaining about and which happened more than six months ago should be included as part of a course of conduct. The tribunal also has power to allow a late claim, but it will only do so if there are exceptional circumstances. If your claim is late, you should set out in the claim form any exceptional circumstances which you want the tribunal to take into account.

Can the tribunal deal with all types of claim?

The tribunal cannot accept claims relating to admissions to maintained (local authority) and state-funded schools, i.e. academies and free schools. Any such appeal is to an independent appeal panel.

The tribunal also cannot accept claims relating to permanent exclusions from maintained schools or state-funded schools if they occurred on or before 31 August 2012.

How do I contact an independent appeal panel?

If you are claiming in relation to admission to a maintained school you should contact your local authority for information about the appeal arrangements. If the school is an academy or free school, you should contact them directly.

If I make a claim to the tribunal, who is the claim against?

Your claim will be registered against the responsible body. That is the organisation which the law states is responsible in cases of disability discrimination. You do not have to tell us who you think the responsible body is as long as you give us details of the school or education setting (full name and address and, wherever possible, the school's contact email address) where the alleged discrimination took place, and the name of the local authority (if it is a maintained school). You cannot claim against a head teacher or other individual, even if you consider that person is responsible for what happened.

In most cases the responsible body is as shown below but, there are possible exceptions.

Type of school	Responsible body
Maintained school	Governing body
Pupil referral unit	Governing body
Maintained nursery	Governing body
Independent schools and academies (including free schools)	The owner (or those responsible for management such as trustees or the governing body)
Non-maintained special school	The owner (or those responsible for management such as trustees or the governing body)

What do I need to show?

If you make a claim we will need to be sure of the following:

- that the alleged discrimination was connected to a disability; and
- what it is you are asking the tribunal to do.

Will I need to prove my child is disabled?

Yes, unless you allege discrimination by association or perception, you will need to state in your claim form the nature of that disability. If you are claiming on the basis of perceived or associated disability you will still be required to provide details of the relevant disability. You should provide evidence of a medical or professional diagnosis if you have one. You should also explain how the disability affects day-to-day activities. If your child has a statement of special educational needs you should include it.

If you are unsure whether your child has a relevant disability you should look at the definition given in the Annex.

The tribunal will, when it decides the claim, normally consider the existence and nature of the disability before considering whether there has been discrimination.

Putting things right

You will be asked to tell us what you would like to happen if the tribunal decides that there has been unlawful discrimination. The tribunal can order the responsible body to do anything reasonable to put right the effects of the discrimination. This includes, in the case of a child permanently excluded from school, an order for reinstatement. The law does not allow payment of compensation. The tribunal has no power to enforce its orders. Normally, if the parent thinks the responsible body has failed to comply, the complaint has to be made to the Secretary of State.

Examples of orders a tribunal can make can be found later in this guide.

If you are seeking to get your child reinstated in a school which has permanently excluded him or her we will deal with the claim using an expedited timetable.

The claim form

You start a claim by returning the claim form. This asks you to explain what happened, how it is connected to disability, and why any action taken by the school was not justified. It is essential that you try to give details for each of the events and failures, including dates. The form must be signed by you or a qualified lawyer. If you are sending the claim form electronically, you or your representative can type your name where a signature is required. A representative who is not a qualified lawyer cannot sign the form on your behalf.

Section 1 – Your child – This section is asking for details of your child.

Section 2 – Your contact details - This section is asking for your details and any representative that you may have.

Section 3 – Details of who the claim is against – The name and address of the school and their contact details - their email address and telephone number and any other information you have about getting in touch with the school

Section 4 – The date when the discrimination occurred – The tribunal cannot register the claim unless you tell us the most recent date discrimination occurred.

Section 5 – Information about your claim – This section asks you to set out what the claim is about. It has separate boxes about fixed-term exclusions, exclusions from trips or activities or other unfavourable treatment and disadvantages your child might have suffered by a failure to make reasonable adjustments for your child's disability. You should clearly set out what rules, policies or other school arrangements put your child at a disadvantage. You can also set out what adjustments you think the school should have made to stop the disadvantage. If the act(s) or circumstances you are complaining about don't fall within any of these categories, there is a separate box for you to describe what has happened and why you think discrimination has occurred. There is space at the end of the section for you to give additional detail about your claim

Section 6 – Your child's disability – This section is asking about your child's disability and the effect it has on their ability to do day-to-day activities. If the claim relates to the disability of another person connected with your child, then details of that person need to be given.

Section 7 – Late claims – If your claim is about things that happened more than six months ago, you can explain why the claim is late and why it is important that it should be accepted.

Section 8 – Putting things right – This section is where you can tell us what you would like to happen if the tribunal decides that your child has been unlawfully discriminated against.

Section 9 – Documents you need to send with your claim – List and describe each document you are sending with the claim, explaining why each one is relevant. This helps the tribunal understand what evidence you say should be taken into account.

Section 10 – Special requirements – This section is asking if you have any special requirements with regards to the claim documents and the hearing.

Section 11 – Other appeal or claim – Sometimes parents also have an appeal before the Tribunal relating to their child’s Education, Health and Care Plan or against the Local Authority’s decision not to carry out an Education, Health and Care needs assessment. Some parents may also be claiming for discrimination relating to more than one child. If that is the case, you should say when the appeal or claim was sent, and the claim or appeal number, if you know it.

Section 12 – Signatures – Please ensure that the form is signed before sending to the tribunal. If sending it as an email attachment you can type in your name (or your legally qualified representative can do so).

Section 13 – Sending us your claim – This section explains where your completed claim form needs to be sent.

Frequently asked questions

What if I don’t include the required information or documents?

If we not have sufficient information to register your claim we will normally return the claim form with a list of requirements. Your response to the returned documents must be sent within 10 working days. If this is after the six month time limit, you will have to request an extension of the time for your claim, giving reasons for the delay.

We may register your claim even if we do not have all necessary documents. If this happens we will write directing that you provide the missing documents within 10 working days. If we do not receive them in this time, the tribunal can strike out the claim which means that it cannot continue.

If you are asking for a reinstatement of your child following a permanent exclusion, you must send the documents you intend to rely on in support of the claim at the same time as you send in the claim form.

Do I have to send original documents?

No. Please ensure that the documents you send to us are **single sided and are photocopies** of the originals.

Do I have to send the claim myself?

No, but you must ensure that you or a qualified lawyer signs the claim form. If you are claiming jointly with another person, both of you must sign the form. We will only send information about the claim to the first person named on the claim form or the representative you name.

If you state on the form that a representative is to receive papers and correspondence in connection with your claim, you will not receive them yourself and the final decision will be issued to your representative. You must let us know in writing if you no longer have a representative, or if their details change.

What if I, my child, or a witness or representative, have special requirements?

Please explain this on the claim form. For example, if you require a signer or an interpreter at the hearing, or need special arrangements to be made so you or your child can attend the hearing, you should state this on the form.

How long will my claim take?

Your claim should normally be heard around 20 weeks after it is registered. The tribunal's decision is normally sent out, with reasons for that decision, within a further two weeks.

We will normally fast-track cases where there has been a permanent exclusion and you are asking for an order for your child to be reinstated in the school, as any order needs to be made as soon as possible. We will refer to these claims below as expedited claims. As explained above we will, however, not expedite a claim if you are currently waiting for a recommendation on the exclusion from the independent review panel. Instead we will stay the claim (put the claim on hold) until you tell us the result of the review.

The hearing for an expedited claim will normally be five to six weeks after the claim is received, with a decision on the day and written reasons either on the day or within five working days.

Is there a Code of Practice for schools?

A non-statutory Code of Practice is published by the Equality and Human Rights Commission.

The code of practice is available at www.equalityhumanrights.com

The Commission can be contacted on 0808 800 0082

Section 3 – Stages up to the hearing

What happens after we receive your claim?

We will register your claim within 10 working days of receipt and send a copy to the responsible body.

In an expedited claim, this will be done on the same working day we receive it, or the next working day if we received it after midday. (As explained above, if you are waiting for a decision from the independent review panel, we will put the claim on hold until you tell us the outcome).

We will notify you when the claim is registered and advise you of the date the hearing will take place. Your claim will have a reference number which should be quoted whenever you contact us about your claim.

We will also send you a date for case management of your claim (except for expedited claims, for which the timetable is too tight). On that date, a tribunal judge or registrar/tribunal caseworker will look at the papers and decide what further steps the parties need to take before the hearing. A timetable will be set for each remaining step.

We will tell you when we register your claim when you have to send in your **attendance form**, giving details of who will attend the hearing.

You should use a **request for changes form** if you wish to change details of your claim or the information you have provided. You may also use this form to request that the tribunal directs someone to take an action that may assist the hearing of the claim.

The **attendance form** and **request for changes form** are available on our website www.justice.gov.uk/tribunals/send or by contacting the tribunal.

What will the responsible body do about my claim?

The responsible body must prepare a response and send it to you and the tribunal within 30 working days of receiving the claim (15 days if it is an expedited claim). The responsible body must also complete an attendance form.

Please let us know if you do not receive the response from the responsible body within eight weeks of the registration of your claim (three and a half weeks for an expedited claim).

Both you and the responsible body will have the same timetable to send further information and evidence. Their response must explain the reasons behind their actions and name the person who is dealing with the claim. They should provide a summary of the facts and issues they feel are relevant to the claim.

The responsible body may also ask us to strike out (bring to an end) your claim if they believe:

- it is not one that the tribunal has the jurisdiction to deal with;
- that it is about a matter that has already been determined;
- that someone else is the responsible body; or
- that your claim has no reasonable chance of succeeding.

We will send you a copy of any application so you may comment and explain why you think your claim should continue. The decision on this application will be made by a judge.

What happens if the responsible body does not oppose the claim?

If the responsible body agrees with your claim and agrees to take action in respect of the discrimination, we will write asking if you wish to withdraw your claim. Alternatively, the tribunal can make a 'consent order' setting out the agreed outcome.

What if the responsible body does not reply?

If the responsible body does not send a response by the end of the time allowed, your claim will be passed to a tribunal judge or registrar who will decide what action should be taken. This may include refusing to allow the responsible body to take any further part in the proceedings.

If the responsible body does not respond to an expedited claim, an order barring it from playing a further part in the proceedings will be made automatically.

If the responsible body has been barred from taking part in the proceedings, the tribunal judge will consider whether your claim can be decided on the basis of the papers or whether a hearing should take place without the responsible body.

The responsible body is entitled to apply, for good reason, to set aside such an order.

Can I comment on the responsible body's response?

Yes. The time by which you must provide any further comments or information will be decided by a tribunal judge or registrar within the case management arrangements, or, for an expedited claim, in the letter you receive after the claim has been registered.

Case management

Except for expedited claims, each claim will be 'case managed' following registration. This process is to ensure that you, the responsible body and the tribunal have all the information necessary for the tribunal panel to reach a decision on the day of the hearing. A tribunal judge or registrar will look at the information provided by you and the responsible body and decide what further action is required by either party. A timetable will be set. As this normally takes place on a review of the papers, neither party is involved, but in some cases a hearing by telephone, video or face-to face hearing will be necessary. The tribunal will contact you if this is necessary and notify you of the arrangements.

If you or the responsible body are unable to do what is directed or comply with any dates, you must send a **request for changes form** stating your reasons. A tribunal judge or registrar will decide what action should be taken.

Before the hearing

Can I send in any more documents?

The case management timetable (or registration letter for an expedited claim) will set out if and when other documents may be sent.

Can I bring new evidence to the hearing?

You will need the tribunal's permission to introduce new evidence outside the case management timetable. You must apply on a **request for changes form**, explaining why it was not sent within time. If permission is given, a new timetable may be set. The same applies to the responsible body. You can also apply at the hearing if you have good reason for wanting to bring in new documentary evidence.

Where do I get a request for changes form?

The form can be obtained from the tribunal by contacting us on:

01325 289350 or from our website www.justice.gov.uk/tribunals/send

What if I find it difficult to obtain a document from the responsible body that is important to my case?

If you apply to us well before the hearing on a **request for changes form**, the tribunal may direct the responsible body to release it. The tribunal will ask the responsible body if it has any objection. If it does the tribunal will consider the objection before making its order. On request the tribunal may also require someone who is not directly involved in the claim to release a document in their possession.

Can I withdraw my claim?

If you wish to withdraw your claim you must request the consent of the tribunal. Please send a **request for changes form** as soon as you decide; consent will normally be given. If the request is made less than **10 working days** before the hearing you must give the reason why the withdrawal application is late. Your request will be considered by a tribunal judge who will decide what further action should be taken.

Section 4 – The hearing

Where will my hearing be held?

Hearings take place at courts and tribunal centres throughout the country. We aim to limit travel to not more than one and a half hours from your home address. Hearings can also be conducted by video and/or telephone if necessary or a 'hybrid' hearing, where some participants are in the hearing room, and others join by telephone or video is possible

What time will my hearing start and how long will it take?

Hearings usually start at 10am. The time will be confirmed in your notice of hearing, or, for an expedited claim, in the letter we send you when the claim is registered.

Please arrive at least 30 minutes before the start to allow time, or follow the joining instructions for a video hearing to test your connections, to meet the clerk and familiarise yourself with the arrangements. The duration of hearings varies dependent on the issues, amount of evidence and number of witnesses attending. Expedited claims will be listed for half a day.

Who will hear my claim?

Your hearing will be heard by a tribunal panel which could consist of a judge and up to two other members who have knowledge and experience of children with special educational needs and disability.

Do I have to come to the hearing?

You do not have to attend the hearing but if you do not you will not have the opportunity to give evidence in person and put questions to the witnesses and comment on what they might say.

Who else can attend?

May I have a representative at the hearing?

You may have a representative at the hearing whether or not you attend yourself. Your representative may be a lawyer or someone from a help organisation or it could be a friend. If a representative is to attend, you must provide details before the hearing on the attendance form or, in an expedited claim, when you send in the claim.

May both parents go to the hearing?

A parent or a person with parental responsibility for the child or who actually cares for the child is entitled to attend the hearing, even if they did not make the claim. If you do not want that person to attend you may request the tribunal to consider your reasons. We may decide to limit that person's involvement in the case.

May my child attend the hearing?

Your child can attend and give evidence. It is likely he or she will not be allowed to stay for the whole hearing. You should arrange for someone to look after your child whilst they are not in the hearing. **The clerk or other tribunal staff will not be able to look after your child and there may not be a suitable place in the building for them to be looked after by the person caring for them.**

May I bring anyone else to support my case?

You can bring someone for support but they will not be able to take part in the hearing. You must give their details on the **attendance form or, for an expedited claim, in the claim form**. Hearings are private and the tribunal will not normally allow people other than the parties' representatives, witnesses and supporters to attend. The tribunal has power to exclude a person from the hearing. We may allow a person who is training to be a representative to attend, provided that they make a request in writing at least **10 working days** before the hearing. They will not be allowed to take part in the hearing.

Witnesses

Do I need to notify you if I want witnesses to attend?

You will need to inform us on the **attendance form** who you have arranged to give evidence at the hearing. If you do not, they may be prevented from participating. If you wish to change your witnesses you should inform us immediately. The tribunal normally allows each party up to five witnesses at the hearing. Only two witnesses are normally allowed for each party in an expedited claim; these should be named on the claim form. If you wish to bring more than the permitted number of witnesses you must request permission in writing on the **request for changes form** explaining why. You will need to show why this witness needs to attend the hearing, instead of, for example, providing a written statement or the evidence being given by one of the other witnesses.

If a witness refuses to come to the hearing you may apply to the tribunal explaining why you feel it is important that they attend. Your request must normally be received **at least 15 working days before the hearing**. If the tribunal agrees, it will issue a witness summons for you to give to the person. That person must then attend the hearing unless they apply beforehand giving reasons why they cannot or should not be required to attend, and the tribunal agrees.

Will I be able to ask my own questions?

You will have the opportunity to ask questions of both your own and the responsible body's witnesses, and give your own evidence about your claim.

Expenses

What expenses may be claimed?

You and your witnesses can claim expenses for travel to the hearing. If you bring a friend or a relative to look after your child, you will be able to claim their travel expenses as well. Public transport should be used whenever possible (bus, tram, standard class rail travel). If you travel by car you may claim a fixed amount for mileage. We will only pay taxi fares if public transport is not available, or if you have particular needs. Use of a taxi must be authorised in advance of the hearing by HM Courts and Tribunal Service. We cannot pay for car parking and tolls.

Your witnesses may also claim a fixed amount for loss of earnings. At the hearing the clerk will provide forms for you to claim. We will either reimburse by post or transfer into your bank account.

SECTION 5 – After the hearing

The decision

Written decisions and orders are usually sent by email and/or by post within 10 working days of the hearing. The decision will be sent to the named contact on the claim form who has been identified to receive all the paperwork. In an expedited claim, we hope to be able to give you the decision on the day of the hearing, with a written decision and reasons issued either that day or within five working days.

Will you confirm that there was discrimination?

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

What can you tell the responsible body to do?

We can order the responsible body to do anything reasonable to remedy the discrimination other than paying financial compensation, as this is not allowed by law.

What might you order by way of putting right discrimination?

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);
- admission of your child to an independent school if the school had previously refused;
- a written apology to your child;
- trips or other opportunities to make up for activities that your child may have missed;
and
- in cases of permanent exclusion, an order reinstating your child at the school.

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

The tribunal will order the responsible body to take the action it specifies within a given time. The responsible body must then do so. If they do not, the tribunal has no powers of enforcement, but there are other steps you may take to enforce the tribunal's order.

What if the responsible body does not comply with the decision?

If the responsible body does not carry out our order within the time limit, and they cannot satisfactorily explain why, you are entitled to complain to the Department for Education. The address is:

Department for Education
Special Educational Needs and Disability Division
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

Phone: 0370 000 2288

The Local Government Ombudsman hears complaints about maladministration by local authorities. If you want to make a complaint to the Ombudsman you should ring the advice line which is open between 10am and 4pm Monday to Friday on 0300 061 0614, or alternatively, access their website at www.lgo.org.uk for further information.

Further appeal

What if I disagree with the tribunal's decision?

You may consider that the decision is wrong in law or that there is another reason why the tribunal should reconsider its decision. If you think it is wrong in law you may appeal to the Administrative Appeals Chamber of the Upper Tribunal but you must first apply to us for permission to appeal.

Who can make an application?

You may make an application if you have been a party to the claim in the tribunal. This includes a parent, or person having parental responsibility and the responsible body.

What applications are possible?

- you may apply for **permission to appeal** if you believe that the tribunal's decision was wrong in law.
- you may ask the tribunal to **set aside** its decision in certain circumstances.

Are there time limits for appeal?

An application must be made so that it is received by the tribunal **no more than 28 days from the date on the letter** which accompanies the decision.

If you apply later than 28 days you should request an extension of time, giving reasons why the application is late. If the tribunal does not agree to extend the time, your application will not be considered.

If you or the responsible body seek permission to appeal the tribunal decision, the decision remains valid pending a decision on the application, unless it is stayed by the tribunal or Upper Tribunal.

Applications for permission to appeal and other applications available following a tribunal decision are explained in detail in the guidance that will be sent to you with your decision.

Annex

A person has a disability if he or she has a physical or mental 'impairment' that has a 'substantial' and 'long term' effect on his or her ability to carry out 'normal day-to-day activities'.

People who have had, but no longer have, a disability are also protected from discrimination.

'Impairment' – includes sensory difficulties, for example sight or hearing difficulties.

'Mental impairment' – covers a range of impairments relating to mental functioning, including 'learning difficulties'.

'Substantial effect' – an effect that is more than minor or trivial.

'Long term' – has lasted 12 months or more, is likely to last 12 months or is likely to last the rest of the person's life.

'Normal day-to-day activities' – those that people carry out often and regularly.

You can find more information in the Equality and Human Rights Commission Code of Practice for Schools in England and Wales.