
STATUTORY INSTRUMENTS

2001 No. 600

The Special Educational Needs Tribunal Regulations 2001

PART 3

PREPARATION OF A HEARING

Acknowledgement of appeal and service of documents by the Secretary of the Tribunal

17.—(1) Upon receiving a notice of appeal the Secretary of the Tribunal shall—

- (a) enter particulars of it in the records;
- (b) send to the parent—
 - (i) an acknowledgement of its receipt and a note of the case number entered in the records;
 - (ii) a note of the address to which notices and communications to the Tribunal or to the Secretary of the Tribunal should be sent;
 - (iii) notification that advice about the appeals procedure may be obtained from the office of the Tribunal; and
 - (iv) subject to regulation 18(2), a notice stating the time for submitting a statement of the parent's case and written evidence under regulation 18(1);
- (c) subject to paragraph 18(2), send to the authority—
 - (i) a copy of the notice of appeal and any accompanying papers;
 - (ii) a note of the address to which notices and communications to the Tribunal to the Secretary of the Tribunal should be sent; and
 - (iii) a notice stating the time for submitting a statement of the authority's case and written evidence under regulation 18(1) and the consequences of failing to do so;
- (d) if, in accordance with regulation 7(1)(a)(vi), the notice of appeal names a maintained school, other than one maintained by the authority, give the head teacher of that school notice of the appeal, stating the name and date of birth of the child and the name of the authority.

(2) Where the Secretary of the Tribunal is of the opinion that, on the basis of the notice of appeal, the parent is asking the Tribunal to do something which it cannot do, he may give notice to the parent—

- (a) stating the reasons for his opinion; and
- (b) informing the parent that the notice of appeal will not be entered in the records unless, within a specified time (which shall not be less than five working days), the parent notifies the Secretary of the Tribunal that he wishes to proceed with it.

(3) Where the Secretary of the Tribunal is of the opinion that there is an obvious error in the notice of appeal—

- (a) he may correct that error and if he does so shall notify the parent accordingly and such notification shall state the effect of paragraph (b); and
- (b) unless within five working days the parent notifies the Secretary of the Tribunal that he objects to the correction, the notice of appeal so corrected shall be treated as the notice of appeal for the purposes of these Regulations.

(4) If the Secretary of the Tribunal has given a notice under paragraph (2), the notice of appeal shall only be treated as having been received for the purposes of paragraph (1) when the parent notifies the Secretary of the Tribunal that he wishes to proceed with the appeal.

Statements of case

18.—(1) Both parties shall be allowed the same period of 30 working days, from the date on which notification is taken to have been delivered in accordance with regulation 50(6), to send a statement of their respective cases and written evidence to the Secretary of the Tribunal.

(2) Where the President makes a direction in accordance with regulation 8, the period specified in paragraph (1) shall not start, and the Secretary of the Tribunal shall not send a notice as required by regulation 17(1)(b)(iv) or any documents as required by regulation 17(1)(c), until particulars of reasons are received in response to the direction.

Copy documents for parties

19.—(1) Subject to paragraph (2), the Secretary of the Tribunal shall—

- (a) forthwith send to the authority a copy of any amendment to the notice of appeal received during the case statement period;
- (b) at the end of the case statement period send a copy of each party's statement of case and written evidence to the other party;
- (c) forthwith send copies of any amendments or supplementary statements, written representations, written evidence (other than written evidence of which a copy is received in accordance with regulation 33(2)(b)) or other documents received from a party after the end of the case statement period to the other party to the proceedings.

(2) If a notice of appeal, a statement of case, amendment, supplementary statement, written representation, written evidence or other document is delivered to the Secretary of the Tribunal after the time prescribed by these Regulations, the Secretary of the Tribunal shall not send a copy of it to the other party unless the President extends the time limit pursuant to regulation 51.

(3) If a notice of appeal is amended in accordance with regulation 9(2) so that the parent seeks an order that a maintained school, or a different maintained school, other than the one already named in the child's statement be named in the statement, the Secretary of the Tribunal shall give the head teacher of that school notice of appeal, stating the name and date of birth of the child and the name of the authority unless the school is maintained by the authority.

Enquiries by the Secretary of the Tribunal

20. The Secretary of the Tribunal shall, at any time after he has received the notice of appeal—

- (a) ask each party—
 - (i) whether or not the party intends to attend the hearing;
 - (ii) whether the party wishes to be represented at the hearing in accordance with regulation 12(6) or 16(1) and if so the name of the representative;
 - (iii) whether the party wishes the hearing to be in public;

- (iv) whether the party intends to call witnesses and if so the names of the proposed witnesses;
- (v) whether the party or a witness will require the assistance of an interpreter;
- (b) enquire of the parent whether he wishes any persons (other than a person who will represent him or any witness whom he proposes to call) to attend the hearing if the hearing is in private and if so the name of such persons; and
- (c) inform each party of the effect of regulation 30(4)(c).

Directions in preparation for a hearing

21.—(1) The President may, on the application of a party or on his own initiative, at any time before the hearing give such directions as are provided in regulations 23 and 24 to enable the parties to prepare for the hearing or to assist the tribunal to determine the issues.

(2) An application by a party for directions shall be made in writing to the Secretary of the Tribunal and, unless it is accompanied by the written consent of the other party, shall be served by the Secretary of the Tribunal on that other party. If the other party objects to the directions sought, the President shall consider the objection and, if he considers it necessary for the determination of the application, shall give the parties an opportunity of appearing before him.

(3) If in the opinion of the President there would not be a reasonable time before a hearing of which notice has been given under regulation 28(1) to comply with a direction for which a party applies, he shall refuse the application.

(4) A direction shall—

- (a) include a statement of the possible consequences for the appeal, as provided by regulation 25, of a party's failure to comply with the requirement within the time allowed by the President;
- (b) if made under regulation 24(2), contain a reference to the fact that, under section 336 of the 1996 Act, any person who without reasonable cause fails to comply with requirements regarding disclosure or inspection of documents shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (c) unless the person to whom the direction is addressed had an opportunity to object to the direction, or he gave his written consent to the application for it, contain a statement to the effect that that person may apply to the President under regulation 22 to vary or set aside the direction.

Varying or setting aside directions

22. Where a party to whom a direction is addressed had no opportunity to object to the giving of such direction and he did not give his written consent to the application for it, he may apply to the President, by notice to the Secretary of the Tribunal, to vary it or set it aside, but the President shall not do so without first notifying the other party and considering any representations made by him.

Particulars and supplementary statements

23. The President may give directions requiring any party to provide in or with that party's statement of case, such particulars or supplementary statements as may reasonably be required for the determination of the appeal.

Disclosures of documents and other material

24.—(1) The President—

- (a) may give directions requiring a party to deliver to the tribunal any document or other material which the tribunal may require and which it is in the power of that party to deliver;
 - (b) shall impose a condition on the supply of a copy of any document or other material delivered in compliance with a direction given under this paragraph that the party receiving it shall use such document only for the purposes of the appeal; and
 - (c) may require a written undertaking to observe that condition before supplying a copy.
- (2) The President may grant to a party an order for such disclosure or inspection of documents (including the taking of copies) as might be granted under the Civil Procedure Rules 1998.

Failure to comply with directions

25.—(1) If a party has not complied with a direction within the time specified in the direction the tribunal may—

- (a) where the party in default is the parent, dismiss the appeal without a hearing;
- (b) where the party in default is the authority, determine the appeal without a hearing; or
- (c)
 - (i) hold a hearing (without notifying the party in default) at which the party in default is not present or represented; or
 - (ii) where the parties have been notified of the hearing in accordance with regulation 28(1), direct that neither the party in default nor any person whom he intends should represent him or give evidence on his behalf be entitled to attend the hearing.

(2) In this regulation “the party in default” means the party which has failed to comply with the direction.

Summoning witnesses

26.—(1) The President may by summons require any person in England and Wales to attend as a witness at a hearing of an appeal at such time and place as may be specified in the summons, and at any adjournment of that hearing, and at the hearing to answer any questions or produce any documents or other material in his custody or under his control which relate to any matter in question in the appeal:

Provided that—

- (a) no person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce at a trial of an action in a Court of law;
- (b) in exercising the power conferred by this regulation, the President shall take into account the need to protect any matter that relates to intimate personal or financial circumstances or consists of information communicated or obtained in confidence;
- (c) no person shall be required to attend in obedience to such a summons unless he has been given at least five working days' notice of the hearing or, if less than five working days, he has informed the President that he accepts such notice as he has been given; and
- (d) no person shall be required in obedience to such a summons to attend and give evidence or to produce any document unless the necessary expenses of his attendance are paid or tendered to him.

(2) A party seeking a witness summons shall apply in writing to the Secretary of the Tribunal at least eight working days before the hearing, or later if the person to whom the summons is to be addressed consents in writing.

(3) A witness summons shall contain—

- (a) a reference to the fact that, under section 336 of the 1996 Act, any person who without reasonable excuse fails to comply with any requirement to attend to give evidence and, if the summons so requires, to produce documents shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and

- (b) a statement of the effect of paragraph (4).

(4) A person to whom a witness summons is addressed may apply to the President, by notice to the Secretary of the Tribunal, to vary it or set it aside, but the President shall not do so without first notifying the party who applied for the issue of the summons and considering any representations made by him.

Consolidating appeals

27.—(1) Where more than one appeal relates to the same child, or requires a decision on substantially the same issue, the President may order that they be heard at the same hearing.

(2) The President may make an order varying or revoking an earlier order made under paragraph (1).

(3) An order made under this regulation shall only be made if it appears to be just and convenient to do so, and before an order is made the parties to every appeal affected shall be given an opportunity to be heard.

Notice of place and time of hearings and adjournments

28.—(1) Subject to the provisions of regulation 29, the Secretary of the Tribunal shall, after consultation with the parties, fix the time and place of the hearing and send to each party a notice that the hearing is to be at such time and place.

(2) The notice of hearing referred to in paragraph (1) shall be sent—

- (a) not less than five working days before the date fixed for a hearing under regulation 15, 37, 38 or 44;
- (b) not less than 10 working days before the date fixed for the hearing in any other case; or
- (c) in any case, within such shorter period before the date fixed for the hearing as the parties may agree.

(3) The Secretary of the Tribunal shall include in or with the notice of hearing—

- (a) information and guidance, in a form approved by the President, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation or assistance as provided by regulation 12(6) or 16(1); and
- (b) a statement explaining the possible consequences of non-attendance and the right to make representations in writing enjoyed by—
 - (i) the parent if he does not attend and is not represented; and
 - (ii) the authority if it is not represented and if it has submitted a statement of its case, unless it stated in writing that it did not resist the appeal or withdrew its opposition to the appeal.

(4) The tribunal may alter the time and place of any hearing and the Secretary of the Tribunal shall give the parties not less than 5 working days (or such shorter time as the parties agree) notice of the altered hearing date:

Provided that any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1).

(5) If the time and place of an adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

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(6) Nothing in paragraphs (1) or (4) shall oblige the Secretary of the Tribunal to consult, or send a notice to any party who is not entitled to be represented at the hearing.

(7) In this regulation “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.