
STATUTORY INSTRUMENTS

1994 No. 1910

EDUCATION, ENGLAND AND WALES

The Special Educational Needs Tribunal Regulations 1994

Made - - - - *14th July 1994*
Laid before Parliament *19th July 1994*
Coming into force - - *1st September 1994*

The Secretary of State for Education, in respect of England, and the Secretary of State for Wales, in respect of Wales, in exercise of the powers conferred by sections 177(5), 178(2), 180(1) and (2), 301(6) and 305(1)(1) of the Education Act 1993(2), and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(3), hereby make the following Regulations:

PART 1
GENERAL

Citation and commencement

1. These Regulations may be cited as the Special Educational Needs Tribunal Regulations 1994 and shall come into force on 1st September 1994.

Interpretation

2. In these Regulations, unless the context otherwise requires—
- “the 1993 Act” means the Education Act 1993;
 - “authority” means the local education authority which made the disputed decision;
 - “child” means the child in respect of whom the appeal is brought;
 - “disputed decision” means the decision or determination in respect of which the appeal is brought;
 - “the clerk to the tribunal” means the person appointed by the Secretary of the Tribunal to act in that capacity at one or more hearings;

(1) See the definitions of “prescribed” and “regulations”.

(2) 1993 c. 35.

(3) 1992 c. 53; Part I of Schedule 1 was amended by section 181(1) of the Education Act 1993.

“hearing” means a sitting of the tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the tribunal to reach a decision on any question;

“parent” means a parent who has made an appeal to the Special Educational Needs Tribunal under the 1993 Act;

“records” means the records of the Special Educational Needs Tribunal;

“the Secretary of the Tribunal” means the person for the time being acting as the Secretary of the office of the Special Educational Needs Tribunal;

“the tribunal” means the Special Educational Needs Tribunal but where the President has determined pursuant to regulation 4(1) that the jurisdiction of the Special Educational Needs Tribunal is to be exercised by more than one tribunal, it means, in relation to any proceedings, the tribunal to which the proceedings have been referred by the President;

“working day” means any day other than—

- (a) 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(4); or
- (b) a day in August.

Members of lay panel

3. No person may be appointed member of the lay panel unless the Secretary of State is satisfied that he has knowledge and experience in respect of—

- (a) children with special educational needs; or
- (b) local government.

Establishment of tribunals

4.—(1) Such number of tribunals shall be established to exercise the jurisdiction of the Special Educational Needs Tribunal as the President may from time to time determine.

(2) The tribunals shall sit at such times and in such places as may from time to time be determined by the President.

Membership of tribunal

5.—(1) Subject to the provisions of regulation 29(5), the tribunal shall consist of a chairman and two other members.

(2) For each hearing—

- (a) the chairman shall be the President or a person selected from the chairman’s panel by the President; and
- (b) the two other members of the tribunal other than the chairman shall be selected from the lay panel by the President.

Proof of documents and certification of decisions

6.—(1) A document purporting to be a document issued by the Secretary of the Tribunal on behalf of the Special Educational Needs Tribunal shall, unless the contrary is proved, be deemed to be a document so issued.

(4) 1971 c. 80.

(2) A document purporting to be certified by the Secretary of the Tribunal to be a true copy of a document containing a decision of the tribunal shall, unless the contrary is proved, be sufficient evidence of matters contained therein.

PART 2

MAKING AN APPEAL TO THE TRIBUNAL AND REPLY BY THE AUTHORITY

(A) THE PARENT

Notice of appeal

- 7.—(1) An appeal to the Special Educational Needs Tribunal shall be made by notice which—
- (a) shall state—
 - (i) the name and address of the parent making the appeal;
 - (ii) the name of the child;
 - (iii) that the notice is a notice of appeal;
 - (iv) the name of the authority which made the disputed decision and the date on which the parent was notified of it;
 - (v) the grounds of the appeal;
 - (b) shall be accompanied (as appropriate) by—
 - (i) a copy of the notice of the disputed decision;
 - (ii) a copy of the child’s statement of special educational needs; and
 - (c) may state the name, address and profession of any representative of the parent to whom the tribunal should send replies or notices concerning the appeal instead of to the parent.
- (2) The parent shall sign the notice of appeal.
- (3) The parent must deliver the notice of appeal to the Secretary of the Tribunal so that it is received no later than the first working day after the expiry of 2 months from the date on which the authority gave him notice, pursuant to the 1993 Act, that he had a right of appeal.

Response, amendment of appeal and delivery of supplementary grounds of appeal

- 8.—(1) If the authority delivers a reply under regulation 12 the parent may deliver a written response to it.
- (2) A response under paragraph (1) above must be delivered to the Secretary of the Tribunal not later than 15 working days from the date on which the parent receives a copy of the authority’s written reply from the Secretary of the Tribunal.
- (3) The parent may in exceptional cases (in addition to delivering a response under paragraph (1) above)—
- (a) with the permission of the President, at any time before the hearing; or
 - (b) with the permission of the tribunal at the hearing itself—
- amend the notice of appeal or any response, deliver a supplementary statement of grounds of appeal or amend a supplementary statement of grounds of appeal.
- (4) The parent shall deliver a copy of every amendment and supplementary statement made under paragraph (3) above before the hearing to the Secretary of the Tribunal.

Withdrawal of appeal

9. The parent may—
- (a) at any time before the hearing of the appeal withdraw his appeal by sending to the Secretary of the Tribunal a notice signed by him stating that he withdraws his appeal;
 - (b) at the hearing of the appeal, withdraw his appeal.

Further action by parent

- 10.—(1) The parent shall supply the Secretary of the Tribunal with the information requested in the enquiry made under regulation 18.
- (2) If the parent does not intend to attend or be represented at the hearing, he may, not less than 5 working days before the hearing, send to the Secretary of the Tribunal additional written representations in support of his appeal.

Representatives of the parent: further provisions

- 11.—(1) Where a parent has not stated the name of a representative in the notice of appeal pursuant to regulation 7(1)(c) he may at any time before the hearing notify the Secretary of the Tribunal of the name, address and profession of a representative to whom the tribunal should send any subsequent documents or notices concerning the appeal instead of to the parent.
- (2) Where a parent has stated the name of a representative, whether in the notice of appeal pursuant to regulation 7(1)(c) or pursuant to paragraph (1) above, he may at any time notify the Secretary of the Tribunal—
- (a) of the name, address and profession of a new representative of the parent to whom the tribunal should send documents or notices concerning the appeal instead of to the representative previously notified; or
 - (b) that no person is acting as a representative of the parent and accordingly any subsequent documents or notices concerning the appeal should be sent to the parent himself.
- (3) At a hearing, the parent may conduct his case himself (with assistance from one person if he wishes) or may appear and be represented by one person whether or not legally qualified:
- Provided that, if the President gives permission before the hearing or the tribunal gives permission at the hearing, the parent may obtain assistance or be represented by more than one person.

(B) THE REPLY BY THE AUTHORITY

Action by the authority on receipt of a notice of appeal

- 12.—(1) An authority which receives a copy of a notice of appeal shall deliver to the Secretary of the Tribunal a written reply acknowledging service upon it of the notice of appeal and stating—
- (a) whether or not the authority intends to oppose the appeal and, if it does intend to oppose the appeal, the grounds on which it relies; and
 - (b) the name and profession of the representative of the authority and the address for service of the authority for the purposes of the appeal.
- (2) The authority shall include with its reply a statement summarising the facts relating to the disputed decision and, if they are not part of that decision, the reasons for the disputed decision.
- (3) Every such reply shall be signed by an officer of the authority who is authorised to sign such documents and shall be delivered to the Secretary of the Tribunal not later than 20 working

days after the date on which the copy of the notice of appeal was received by the authority from the Secretary of the Tribunal.

Amendment of reply by the authority

13.—(1) The authority, if it has delivered a reply pursuant to regulation 12, may, in exceptional cases—

- (a) with the permission of the President at any time before the hearing; or
- (b) with the permission of the tribunal at the hearing itself

amend its reply, deliver a supplementary reply or amend a supplementary reply.

(2) The President or, as the case may be, the tribunal may give permission under paragraph (1) above on such terms as he or it thinks fit including the payment of costs or expenses.

(3) The authority shall send a copy of every amendment and supplementary statement made before the hearing to the Secretary of the Tribunal.

Notice that an appeal is misconceived

14.—(1) Where the authority is of the opinion that an appeal does not lie to, or cannot be entertained by, the Special Educational Needs Tribunal, it may serve a notice to that effect on the Secretary of the Tribunal stating the grounds for such contention and applying for the appeal to be struck out.

(2) The Secretary of the Tribunal shall send a copy of the notice and of any accompanying documents to the parent.

(3) An application under this regulation may be heard by the tribunal as a preliminary point of law or at the beginning of the hearing of the substantive appeal.

Failure to reply and absence of opposition

15. If no reply is received by the Secretary of the Tribunal within the time appointed by regulation 12(3) or if the authority states in writing that it does not resist the appeal, or withdraws its opposition to the appeal, the tribunal may determine the appeal on the basis of the notice of appeal without a hearing or may (without notifying the authority) hold a hearing at which the authority is not represented.

Representation at hearing and further action by the authority

16.—(1) At a hearing the authority may be represented by one person whether or not legally qualified:

Provided that if the President gives permission before the hearing or the tribunal gives permission at the hearing the authority may be represented by more than one person.

(2) The authority shall supply the Secretary of the Tribunal with the information requested in the enquiry made under regulation 18.

(3) If the authority does not intend to attend or be represented at the hearing it may, not less than 5 working days before the hearing, send to the Secretary of the Tribunal additional written representations in support of its reply.

PART 3

PREPARATION FOR 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 Special Educational Needs Tribunal or to the Secretary of the Tribunal should be sent; and
 - (iii) notification that advice about the appeal procedure may be obtained from the office of the Special Educational Needs Tribunal;
- (c) subject to paragraph (5) below, 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 Special Educational Needs Tribunal or to the Secretary of the Tribunal should be sent, and
 - (iii) a notice stating the time for replying and the consequences of failure to do so.

(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 Special Educational Needs Tribunal to do something which it cannot, he may give notice to that effect to the parent stating the reasons for his opinion and informing him that the notice of appeal will not be entered in the records unless the parent notifies the Secretary of the Tribunal that he wishes to proceed with it.

(3) An appeal, as respects which a notice has been given in pursuance of paragraph (2) above, 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 it.

(4) Subject to paragraph (5) below, the Secretary of the Tribunal shall forthwith send a copy of a reply by the authority under regulation 12 and of a response under regulation 8 together with any amendments or supplementary statements, written representations or other documents received from a party, to the other party to the proceedings.

(5) If a notice of appeal, reply by the authority under regulation 12 or response by the parent under regulation 8 is delivered to the Secretary of the Tribunal after the time prescribed by these Regulations, the Secretary of the Tribunal shall defer the sending of the copies referred to in paragraph (1)(c) or (4) above pending a decision by the President as to an extension of the time limit pursuant to regulation 42.

Enquiries by Secretary of the Tribunal

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

- (a) enquire of 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 11(3) 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; and
 - (v) whether the party or a witness will require the assistance of an interpreter; and
- (b) enquire of the parent whether he wishes any persons (other than a person who will represent him) to attend the hearing if the hearing is to be in private and if so the names of such persons.

Directions in preparation for a hearing

19.—(1) The President may at any time give such directions (including the issue of a witness summons) as are provided in this Part of these Regulations to enable the parties to prepare for the hearing or to assist the tribunal to determine the issues.

(2) Directions given pursuant to regulations 21 and 22 may be given on the application of a party or of the President's own motion.

(3) A witness summons issued pursuant to regulation 23 may only be issued on the application of a party.

(4) An application by a party for directions (other than during a hearing) 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.

(5) Directions containing a requirement under this Part of these Regulations shall, as appropriate—

- (a) include a statement of the possible consequences for the appeal, as provided by regulation 24, of a party's failure to comply with the requirement within the time allowed by the President; and
- (b) contain a reference to the fact that, under section 180(5) of the 1993 Act, any person who without reasonable excuse fails to comply with requirements regarding discovery or inspection of documents, or regarding attendance to give evidence and produce documents, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and shall, unless the person to whom the direction is addressed had an opportunity of objecting to the direction, contain a statement to the effect that that person may apply to the President under regulation 20 to vary or set aside the direction.

Varying or setting aside of directions

20. Where a person to whom a direction (including any summons) given under this Part of these Regulations is addressed had no opportunity to object to the giving of such direction, 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 so do without first notifying the person who applied for the direction and considering any representations made by him.

Particulars and supplementary statements

21. The President may give directions requiring any party to provide such particulars or supplementary statements as may be reasonably required for the determination of the appeal.

Disclosure of documents and other material

22.—(1) The President 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. The President shall make such provision as he thinks necessary to supply copies of any document obtained under this paragraph to the other party to the proceedings, and it shall be a condition of such supply that that party shall use such a document only for the purposes of the appeal.

(2) The President may grant to a party such discovery or inspection of documents (including the taking of copies) as might be granted by a county court.

Summoning of witnesses

23. 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 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 powers 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 5 working days' notice of the hearing or, if less than 5 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.

Failure to comply with directions

24.—(1) If a party has not complied with a direction to it under this Part of these Regulations 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) hold a hearing (without notifying the party in default) at which the party in default is not represented.

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

Notice of place and time of hearing and adjournments

25.—(1) Subject to the provisions of regulation 26, the Secretary of the Tribunal shall, with due regard to the convenience of the parties, fix the time and place of the hearing and, not less than 10 working days before the date so fixed (or such shorter time as the parties agree), send to each party a notice that the hearing is to be at such time and place.

(2) 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 11(3) or 16(1); and
 - (b) a statement explaining the possible consequences of non-attendance and of the right of—
 - (i) a parent; and
 - (ii) the authority, if it has presented a reply,who does not attend and is not represented, to make representations in writing.
- (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) The tribunal may from time to time adjourn the hearing and, if the time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

PART 4

DETERMINATION OF APPEALS

Power to determine an appeal without a hearing

- 26.—(1) The tribunal may—
- (a) if the parties so agree in writing; or
 - (b) in the circumstances described in regulations 15 and 24,
- determine an appeal or any particular issue without a hearing.
- (2) The provisions of regulation 28(2) shall apply in respect of the determination of an appeal, or any particular issue, under this regulation.

Hearings to be in private: exceptions

- 27.—(1) A hearing by the tribunal shall be in private unless—
- (a) both the parent and the authority request that the hearing be in public; or
 - (b) the tribunal orders that the hearing should be in public.
- (2) The following persons (as well as the parties and their representatives) shall be entitled to attend the hearing of an appeal, even though it is in private—
- (a) any person named by the parent in response to the enquiry under regulation 18(b) unless the President has determined that any such person shall not be entitled to attend the hearing and notified the parent accordingly;
 - (b) a parent of the child who is not a party to the appeal;
 - (c) the clerk to the tribunal and the Secretary of the Tribunal;
 - (d) the President and any member of the chairmen’s or lay panel (when not sitting as members of the tribunal);
 - (e) a member of the Council on Tribunals;
 - (f) any person undergoing training as a member of the chairmen’s or lay panel or as a clerk to the tribunal;

(g) any person acting on behalf of the President in the training or supervision of clerks to tribunals;

(h) an interpreter.

(3) The tribunal, with the consent of the parties or their representatives actually present, may permit any other person to attend the hearing of an appeal which is held in private.

(4) Without prejudice to any other powers it may have, the tribunal may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the tribunal, to disrupt the hearing.

(5) For the purposes of arriving at its decision a tribunal shall, and for the purposes of discussing any question of procedure may, notwithstanding anything contained in these Regulations, order all persons to withdraw from the sitting of the tribunal other than the members of the tribunal or any of the persons mentioned in paragraph (2)(c) to (f) above.

(6) Except as provided in paragraph (7) below none of the persons mentioned in paragraph (2) or (3) above shall, save in the case of the clerk to the tribunal or an interpreter as their respective duties require, take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the tribunal.

(7) The tribunal may permit a parent of the child who is not a party to the appeal to address the tribunal on the subject matter of the appeal.

Failure of parties to attend hearing

28.—(1) If a party fails to attend or be represented at a hearing of which he has been duly notified, the tribunal may—

(a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or

(b) adjourn the hearing,

and may make such order as to costs and expenses as it thinks fit.

(2) Before disposing of an appeal in the absence of a party, the tribunal shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this regulation the notice of appeal, any reply by the authority under regulations 12 or 13 and any response by the parent under regulation 8 shall be treated as representations in writing.

Procedure at hearing

29.—(1) At the beginning of the hearing the chairman shall explain the order of proceeding which the tribunal proposes to adopt.

(2) The tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues and generally to the just handling of the proceedings; it shall, so far as appears to it appropriate, seek to avoid formality in its proceedings.

(3) The tribunal shall determine the order in which the parties are heard and the issues determined.

(4) The tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of appeal or, as the case may be, his reply or response and to adduce any evidence not presented to the authority before or at the time it took the disputed decision.

(5) If after the commencement of any hearing a member of the tribunal other than the chairman is absent, the hearing may, with the consent of the parties, be conducted by the other two members and in that event the tribunal shall be deemed to be properly constituted and the decision of the tribunal shall be taken by those two members.

Evidence at hearing

30.—(1) In the course of the hearing the parties shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the tribunal both on the evidence and generally on the subject matter of the appeal:

Provided that neither party shall be entitled to call more than two witnesses to give evidence orally (in addition to any witnesses whose attendance is required pursuant to paragraph (2) below) unless the President has given permission before the hearing or the tribunal gives permission at the hearing.

(2) Evidence before the tribunal may be given orally or by written statement, but the tribunal may at any stage of the proceedings require the personal attendance of any maker of any written statement.

(3) The tribunal may receive evidence of any fact which appears to the tribunal to be relevant.

(4) The tribunal may require any witness to give evidence on oath or affirmation, and for that purpose there may be administered an oath or affirmation in due form, or may require any evidence given by written statement to be given by affidavit.

Decision of the tribunal

31.—(1) A decision of the tribunal may be taken by a majority and where the tribunal is constituted by two members only under regulation 29(5) the chairman shall have a second or casting vote.

(2) The decision of the tribunal may be given orally at the end of the hearing or reserved and, in any event, whether there has been a hearing or not, shall be recorded forthwith in a document which, save in the case of a decision by consent, shall also contain, or have annexed to it, a statement of the reasons (in summary form) for the tribunal's decision, and each such document shall be signed and dated by the chairman.

(3) Neither a decision given orally nor the document referred to in paragraph (2) above shall contain any reference to the decision being by majority (if that be the case) or to any opinion of a minority.

(4) Every decision of the tribunal shall be entered in the records.

(5) As soon as may be the Secretary of the Tribunal shall send a copy of the document referred to in paragraph (2) above to each party, accompanied by guidance, in a form approved by the President, about the circumstances in which there is a right to appeal against a tribunal decision and the procedure to be followed.

(6) Every decision shall be treated as having been made on the date on which a copy of the document recording it is sent to the parent (whether or not the decision has been previously announced at the end of the hearing).

Review of the tribunal's decision

32.—(1) If, on the application of a party to the Secretary of the Tribunal or of its own motion, the tribunal is satisfied that—

- (a) its decision was wrongly made as a result of an error on the part of the tribunal staff;
- (b) a party, who was entitled to be heard at a hearing but failed to appear or be represented, had good and sufficient reason for failing to appear; or
- (c) the interests of justice require,

the tribunal may review and, by certificate under the chairman's hand, set aside or vary the relevant decision.

(2) An application for the purposes of paragraph (1) above may be made immediately following the decision at the hearing. If an application is not made at the hearing, it shall be made not later than 10 working days after the date on which the decision was sent to the parties, and shall be in writing stating the grounds in full. When the tribunal proposes to review its decision of its own motion, it shall serve notice of that proposal on the parties within the same period.

(3) An application for the purposes of paragraph (1) above may be refused by the President, or by the chairman of the tribunal which decided the case, if in his opinion it has no reasonable prospect of success.

(4) If the application is not refused under paragraph (3) above, the parties shall have an opportunity to be heard on any application or proposal for review under this regulation and the review shall be determined by the tribunal which decided the case or, where it is not practicable for it to be heard by that tribunal, by a tribunal appointed by the President; and if, having reviewed the decision, the decision is set aside, the tribunal shall substitute such decision as it thinks fit or order a rehearing before either the same or a differently constituted tribunal.

(5) If any decision is set aside or varied under this regulation or altered in any way by order of a superior court, the Secretary of the Tribunal shall alter the entry in the records to conform with the chairman's certificate or order of a superior court and shall notify the parties accordingly.

Review of the President's decision

33.—(1) If, on the application of a party to the Secretary of the Tribunal or of his own motion the President is satisfied that—

- (a) a decision by him was wrongly made as a result of an error on the part of the tribunal staff; or
- (b) the interests of justice require,

the President may review and set aside the relevant decision of his.

(2) An application for the purposes of paragraph (1) shall be made not later than 10 working days after the date on which the party making the application was notified of the decision and shall be in writing stating the grounds in full. Where the President proposes to review his decision of his own motion he shall serve notice of that proposal on the parties within the same period.

(3) The parties shall have an opportunity to be heard on any application or proposal for review under this regulation and the review shall be determined by the President.

(4) If any decision is set aside or varied under this regulation the Secretary of the Tribunal shall alter the entry in the records and shall notify the parties accordingly.

Orders for costs and expenses

34.—(1) The tribunal shall not normally make an order in respect of costs and expenses, but may, subject to paragraph (2) below, make such an order—

- (a) against a party (including any party who has withdrawn his appeal or reply) if it is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable;
- (b) against an authority which has not delivered a written reply under regulation 12; or
- (c) against the authority, where it considers that the disputed decision was wholly unreasonable.

(2) Any order in respect of costs and expenses may be made—

- (a) as respects any costs or expenses incurred, or any allowances paid; or

(b) as respects the whole, or any part, of any allowance (other than allowances paid to members of tribunals) paid by the Secretary of State under section 180(3) of the 1993 Act to any person for the purposes of, or in connection with, his attendance at the tribunal.

(3) No order shall be made under paragraph (1) above against a party without first giving that party an opportunity of making representations against the making of the order.

(4) An order under paragraph (1) above may require the party against whom it is made to pay the other party either a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings or the whole or part of such costs as taxed (if not otherwise agreed).

(5) Any costs required by an order under this regulation to be taxed may be taxed in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as shall be directed in the order.

PART 5

ADDITIONAL POWERS OF AND PROVISIONS RELATING TO THE TRIBUNAL

Transfer of proceedings

35. Where it appears to the President that an appeal pending before a tribunal could be determined more conveniently in another tribunal he may at any time, upon the application of a party or of his own motion, direct that the said proceedings be transferred so as to be determined in that other tribunal:

Provided that no such direction shall be given unless notice has been sent to all parties concerned giving them an opportunity to show cause why such a direction should not be given.

Miscellaneous powers of the tribunal

36.—(1) Subject to the provisions of the 1993 Act and these Regulations, a tribunal may regulate its own procedure.

(2) A tribunal may, if it thinks fit, if both parties agree in writing upon the terms of a decision to be made by the tribunal, decide accordingly.

Power to strike out

37.—(1) The tribunal may, on the application of the President or the authority, at any stage of the proceedings order that an appeal should be struck out—

- (a) on the grounds that it is not within the jurisdiction of the Special Educational Needs Tribunal;
- (b) on the grounds that the appeal or the notice of appeal is scandalous, frivolous or vexatious; or
- (c) for want of prosecution.

(2) Before the tribunal makes an order under paragraph (1) above, the Secretary of the Tribunal shall give to the parent a notice inviting representations and the tribunal shall consider any representations duly made. If the parent does not request an opportunity to make oral representations, the Tribunal need not hold a hearing.

(3) The President may, if he thinks fit, at any stage of the proceedings order that a reply, response or statement should be struck out or amended on the grounds that it is scandalous, frivolous or vexatious.

(4) Before making an order under paragraph (3) above, the President shall give to the party against whom he proposes to make the order a notice inviting representations and shall consider any representations duly made.

(5) For the purposes of paragraphs (2) and (4) above—

(a) a notice inviting representations must inform the recipient that he may, within a period (not being less than 5 working days) specified in the notice, either make written representations or request an opportunity to make oral representations;

(b) representations are duly made if—

(i) in the case of written representations, they are made within the period so specified; and

(ii) in the case of oral representations, the party proposing to make them has requested an opportunity to do so within the period so specified.

Power to exercise powers of the President and Chairman

38.—(1) An act required or authorised by these Regulations to be done by the President may be done by a member of the chairman’s panel authorised by the President.

(2) Where, pursuant to paragraph (1) above, a member of the chairman’s panel carries out the function under regulation 5(2) of selecting the chairman of a tribunal, he may select himself.

(3) Where, pursuant to paragraph (1) above a member of the chairman’s panel makes a decision, regulation 33 shall apply in relation to that decision taking the reference in that regulation to the President as a reference to the member of the chairman’s panel by whom the decision was taken.

(4) Subject to regulation 40(5) in the event of the death or incapacity of the chairman following the decision of the tribunal in any matter, the functions of the chairman for the completion of the proceedings, including any review of the decision, may be exercised by the President or any member of the chairman’s panel.

The Secretary of the Tribunal

39. A function of the Secretary of the Tribunal may be performed by another member of the staff of the tribunal authorised for the purpose of carrying out that function by the President.

Irregularities

40.—(1) An irregularity resulting from failure to comply with any provisions of these Regulations or of any direction of the tribunal before the tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the tribunal, the tribunal may, and shall, if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a decision of the tribunal or a direction or decision of the President produced by or on behalf of the tribunal or errors arising in such documents from accidental slips or omissions may at any time be corrected by the chairman or the President (as the case may be) by certificate under his hand.

(4) The Secretary of the Tribunal shall as soon as may be send a copy of any corrected document containing reasons for the tribunal’s decision, to each party.

(5) Where by these Regulations a document is required to be signed by the chairman but by reason of death or incapacity the chairman is unable to sign such a document, it shall be signed by the other members of the tribunal, who shall certify that the chairman is unable to sign.

Method of sending, delivering or serving notices and documents

41.—(1) A notice given under these Regulations shall be in writing and where under these Regulations provision is made for a party to notify the Secretary of the Tribunal of any matter he shall do so in writing.

(2) All notices and documents required by these Regulations to be sent or delivered to the Secretary of the Tribunal or the tribunal may be sent by post or by facsimile or delivered to or at the office of the Special Educational Needs Tribunal or such other office as may be notified by the Secretary of the Tribunal to the parties.

(3) All notices and documents required or authorised by these Regulations to be sent or given to any person mentioned in sub-paragraph (a) or (b) below may (subject to paragraph (5) below) either be sent by first class post or by facsimile or delivered to or at—

- (a) in the case of a notice or document directed to a party—
 - (i) his address for service specified in the notice of appeal or in a written reply or in a notice under paragraph (4) below, or
 - (ii) if no address for service has been so specified, his last known address; and
- (b) in the case of a notice or document directed to any person other than a party, his address or place of business or if such a person is a corporation, the corporation's registered or principal office and if sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party may at any time by notice to the Secretary of the Tribunal change his address for service under these Regulations.

(5) The recorded delivery service shall be used instead of the first class post for service of a summons issued under regulation 23 requiring the attendance of a witness.

(6) A notice or document sent by the Secretary of the Tribunal by post in accordance with these Regulations, and not returned, shall be taken to have been delivered to the addressee on the second working day after it was posted.

(7) A notice or document sent by facsimile shall be taken to have been delivered when it is received in legible form.

(8) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this regulation, the President may dispense with service or make an order for substituted service in such manner as he may deem fit and such service shall have the same effect as service in the manner prescribed under this regulation.

Extension of time

42.—(1) Where, pursuant to any provision of these Regulations anything is required to be done by a party within a period of time the President may, on the application of the party in question, in exceptional circumstances extend any period of time.

(2) Where a period of time has been extended pursuant to paragraph (1) above any reference in these Regulations to that period of time shall be construed as a reference to the period of time as so extended.

Parent's representative

43. Where, pursuant to regulation 7(1)(c) or 11(1) or (2)(a) a parent has stated the name of a representative, and has not subsequently notified the Secretary of the Tribunal pursuant to regulation 11(2)(b) that no person is acting as a representative, any reference in Part 3, 4 or 5 of these Regulations (however expressed) to sending documents to, or giving notice to, the parent shall be construed as a reference to sending documents to or giving notice to the representative and any

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such reference to sending documents to or giving notice to a party or the parties shall in the context of the parent be likewise construed as a reference to sending documents to, or giving notice to the representative.

12th July 1994

John Patten
Secretary of State for Education

14th July 1994

John Redwood
Secretary of State for Wales

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the establishment of and regulate the procedure of the Special Educational Needs Tribunal established by section 177 of the Education Act 1993.

Part 1 contains general provisions including provisions as to the members of the lay panel and the establishment of tribunals to exercise the jurisdiction of the Special Educational Needs Tribunal. Part 2 contains provisions relating to the making of an appeal to the tribunal and the reply by the local education authority. Part 3 contains provisions relating to the preparation for the hearing. Part 4 contains provisions relating to the determination of appeals. Part 5 contains additional powers of, and provisions relating to, the tribunal.