

2002 No. 2787

EDUCATION, ENGLAND AND WALES

**The Special Educational Needs Tribunal (Amendment)
Regulations 2002**

Made - - - - - 11th November 2002
Laid before Parliament 19th November 2002
Coming into force - - - 10th December 2002

In exercise of the powers conferred by sections 333(5), 334(2), 336(1), (2) and (2A) and 569(4) of the Education Act 1996(a), the Secretary of State for Education and Skills, with the agreement of the National Assembly for Wales in accordance with article 5 of the National Assembly for Wales (Transfer of Functions) Order 1999(b) and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Enquiries Act 1992(c), hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Special Educational Needs Tribunal (Amendment) Regulations 2002 and shall come into force on 10th December 2002.

(2) These Regulations apply to all appeals to the Tribunal where the notice of appeal is entered in the records of the Tribunal on or after 10th December 2002.

Amendment

2. The Special Educational Needs Tribunal Regulations 2001(d) shall be amended in accordance with regulations 3 to 22 of these Regulations.

3.—(1) In regulation 2(1)—

(a) following the definition of “child’s statement”, insert—

“ the Disability Claims Regulations” means The Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002;”;

(b) in the definition of “parent”, omit “, except in regulations 7, 30(2) and (8) and 39(6),” and following “has made” insert “or may make”;

(a) 1996 c.56; section 336(2A) was inserted by the Special Educational Needs and Disability Act 2001, Schedule 8, paragraphs 1, 13(1) and (3).

(b) S.I. 1999/672.

(c) 1992 c.53.

(d) S.I. 2001/600.

(c) in the definition of “the tribunal”, for “Special Educational Needs Tribunal” substitute “Special Educational Needs and Disability Tribunal”(a), and following “4(1)” insert “of the Disability Claims Regulations”;

(d) for the definition of “working day”, substitute—

“ “working day” means any day other than a Saturday, a Sunday, any day from 25th December to 1st January inclusive, Good Friday, the first Monday in May, any day in August or a day which is a bank holiday in England and Wales within the meaning of the Banking and Financial Dealings Act 1971;”.

(2) Omit regulation 2(2).

4. Omit regulations 3 to 6.

5. For regulation 7(4) substitute—

“(4) The notice of appeal may include a request that the appeal be heard with a claim of unlawful discrimination under Chapter 1 of Part IV of the Disability Discrimination Act 1995 in accordance with regulation 27(2) of the Disability Claims Regulations.”.

6.—(1) In regulation 9(1) for “all written evidence which he wishes to submit to the Tribunal”, substitute “must submit all written evidence on which he intends to rely and which he has not already submitted”.

(2) In regulation 9(2) omit “, at any time before the hearing”, and for “the hearing” in sub-paragraph (b) substitute “a hearing”.

(3) In regulation 9(4) for “shall consider extending” substitute “may extend”, and following “period” insert—

“under regulation 51(1) or, if it has expired, grant such further period as he considers appropriate”.

(4) Following regulation 9(4), insert—

“(5) If, at the time permission is granted under paragraph (2), the authority has lost its entitlement to be represented at the hearing in accordance with regulations 15 or 25, the giving of permission shall restore such entitlement and, if necessary, the hearing shall be re-arranged or adjourned, as appropriate, so that the authority can be represented.”.

7. For sub-paragraphs (a) and (b) of regulation 10 substitute—

“(a) at a hearing; or

(b) at any other time, by sending written notification to the Secretary of the Tribunal.”.

8. In regulation 12(6) omit “before the hearing”, and for “the hearing” where next it appears substitute “a hearing”.

9.—(1) In regulation 13(1), for “which it wishes to submit to the Tribunal” substitute “on which it intends to rely”.

(2) In regulation 13(3) omit “, at any time before the hearing”, and for “the hearing” where next it appears substitute “a hearing”.

(3) In regulation 13(5) for “shall consider extending” substitute “may extend”, and following “period” insert—

“under regulation 51(1), or if it has expired, grant such further period as he considers appropriate”.

(4) Following regulation 13(5) insert—

“(6) If, at the time permission is granted under paragraph (3), the parent has lost his entitlement to attend or be represented at the hearing in accordance with regulation 25, the

(a) This reflects that body’s change of title pursuant to section 17 of the Special Educational Needs and Disability Act 2001 (c.10).

giving of permission shall restore such entitlement and, if necessary, the hearing shall be rearranged or adjourned, as appropriate, so that the parent can attend or be represented.”.

10. In regulation 15(1)—

- (a) following “period or”, insert “, subject to section 326A of the 1996 Act,”; and
- (b) following “notice of appeal”, insert “and any other documentation already received or amended in accordance with regulation 9(1) and (2),”.

11. In regulation 16(1), omit “before the hearing” and for “the hearing” where next it appears substitute “a hearing”.

12.—(1) In regulation 17(1)(c), for “subject to paragraph 18(2)” substitute “at the same time as sending to the parent the notice referred to in sub-paragraph (b)(iv)”.

(2) In regulation 17(1)(d) for “give the head teacher of that school notice of the appeal” substitute—

“give—

- (i) the head teacher of that school; and
- (ii) if the school is maintained by another authority, that other authority,

notice of the appeal”.

13. In regulation 18(1), for “from” substitute “commencing on”, and following “notification” insert “issued further to regulation 17(1)(b)(iv) and (c)(iii)”.

14.—(1) In regulation 19(3), before “appeal” where it appears for the second time, insert “the”.

(2) Following paragraph (3), insert—

“(4) In the event of a school referred to in paragraph (3) not being maintained by the authority the notice required by that paragraph shall also be given to the authority by which the school is maintained.

(5) Where the Secretary of the Tribunal sends any of the copies of documents referred to in paragraph (1) to a party who has already informed the Secretary of the Tribunal in response to the enquiries made under regulation 20(a)(i) and (ii) that the party does not wish to attend or be represented at the hearing, the Secretary of the Tribunal shall ask whether the party wishes to amend that response on the basis of the copies received.”.

15. Following “regulation 30(4)(c)” in sub-paragraph (c) of regulation 20, insert—

“and the provisions of regulation 34(1) and (2); and

- (d) inform the parties that where an answer to the enquiries under sub-paragraphs (a) or (b) changes after the party has responded to the enquiries, the party concerned must inform the Secretary of the Tribunal in writing forthwith”.

16. Following regulation 21(4), insert—

“(5) Where, in accordance with regulation 27(2) of the Disability Claims Regulations, the President orders that an appeal be heard together with a claim under Chapter 1 of Part IV of the Disability Discrimination Act 1995, the directions given under paragraph (1) shall relate to the appeal only; but in giving such directions the President may consider whether it is in the interests of the efficient disposal of the appeal and the claim, and in the interests of the parties, that the directions given with respect to the appeal are the same as, or similar to, those given in the claim.

(6) Where it appears to the President that there is an issue in any appeal which must be determined prior to the substantive hearing of the appeal and which cannot properly be determined by the giving of directions, he may summon the parties to appear before him for this purpose and may give any necessary directions relating to their appearance.”.

17. In regulation 26(1) following “tendered to him” in sub-paragraph (d), insert—

“; and

(e) no summons shall require a person under the age of 12 to attend and give evidence at the hearing except where the President determines that the evidence of such a person is necessary to enable the fair hearing of the appeal”.

18. For regulation 28(7), substitute—

“(7) In this regulation, “working day” has the meaning ascribed to it in regulation 2 except that it includes any day in August which is not a Saturday, Sunday or bank holiday.”.

19.—(1) In regulation 30(1), following “shall” insert “not”, and for “unless” substitute “if”.

(2) In regulation 30(1)(b) omit “, at any time before the hearing”, and for “the hearing” where next it appears substitute “a hearing”.

(3) In regulation 30(2)(b) for “(8)” substitute “(9)”.

(4) In regulation 30(2) following “interpreter” in sub-paragraph (i), insert—

“;

(j) any person giving other necessary assistance to a person sitting as a member of the tribunal or entitled to attend the hearing further to this regulation”.

(5) In regulation 30(5) for “paragraph 2(d) to (g)” substitute “sub-paragraphs (d) to (g), or, as their respective duties require, sub-paragraphs (i) and (j), of paragraph (2)”.

(6) In regulation 30(6) for “paragraphs (2)(a) to (i) or” substitute “sub-paragraphs (a) to (j) of paragraph (2) or paragraph”, and for “clerk to the tribunal or an interpreter” substitute “persons specified in sub-paragraphs (d), (i) and (j) of paragraph (2)”.

(7) In regulation 30(9) omit “before the hearing”, and for “the hearing” where next it appears substitute “a hearing”.

(8) Omit regulation 30(10).

20. In regulation 34(1) omit “before the hearing” where it appears for the second time, and for “the hearing” where next it appears substitute “a hearing”.

21. In regulation 46(2)(b) for “44(3)” substitute “45(3)”.

22.—(1) In regulation 48(3)(a), for the text following “effect” substitute—

“—

(i) in accordance with regulation 17(1)(b)(iv) and 17(1)(c)(iii), that a new case statement period shall be commenced; and

(ii) that, within the new period, the parties may submit the documentation referred to in sub-paragraph (b) in respect of a statement of case or evidence submitted before the strike out took effect;”.

(2) In regulation 48(4) for “that period”, substitute “the periods referred to in paragraphs (2) and (3)(b)”.

11th November 2002

Stephen Twigg
Parliamentary Under Secretary of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Special Educational Needs Tribunal Regulations 2001, which make provision in relation to the Special Educational Needs Tribunal established by section 333 of the Education Act 1996, dealing in particular with the making and determination of appeals under part IV of that Act.

The Regulations make minor procedural amendments, required as a consequence of the implementation of the Special Educational Needs and Disability Act 2001 or introduced to achieve consistency with the Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002. Certain general provisions relating to the Tribunal appear in those Regulations, and have consequently been removed from the Special Educational Needs Tribunal Regulations 2001.

In particular these Regulations—

- (a) extend of a number of the President's powers so that he continues to hold them even after the relevant tribunal has commenced hearing the case (regulations 6(2), 8, 9(2), 11, 19(2), 19(7), 20);
- (b) restore the entitlement of a party to be heard, in circumstances where a case is supplemented or amended (regulations 6(4), 9(4), 14(2));
- (c) permit the grant of an additional period of time where the case statement period has expired and cannot be extended (regulations 6(3), 9(3));
- (d) require determination without a hearing to be made on the basis of all documentation, rather than just the notice of appeal (regulation 10(b));
- (e) require notice to be given to the maintaining authority of a school before any decision is taken to name that school in a statement of Special Educational Needs (regulations 12(2), 14(2));
- (f) restrict the availability of witness summonses in relation to children under 12 (regulation 17);
- (g) provide for the attendance at hearings of persons providing necessary assistance to tribunal members and others entitled to attend, and for them to participate in the hearing and/or remain for Tribunal deliberations where necessary (regulation 19(4), (5) and (6)); and
- (h) extend the right to supplement an existing case to those for whom the case statement period had not expired prior to striking out (regulation 22(1)).

The Regulations make other minor and consequential amendments.

STATUTORY INSTRUMENTS

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