

Appealing a Refusal to Assess an EHCP Decision

Information Summary Sheet



I've just received a Refusal to Assess, what can i do?

You may have received notice from the Local Authority (LA), following an Education, Health and Care Needs Assessment (EHCNA), that they have refused to assess an EHC Plan for your child. This can feel frustrating, but it's important to remember that even if they've refused, you still have the right to appeal the decision.

Below are the potential reasons for the refusal and what the legal grounds around them should be. If you are unhappy with the LA's decision not to assess for EHC Plan and you wish to lodge an appeal, then you will need to follow the correct legal process.

Why can the LA refuse to assess an EHC Plan?

The LA can only refuse your request if the submission does not meet the legal test; If the views you have stated, and the evidence submitted do not indicate any potential SEN and/or the potential need for extra provision.

the legal test the LA must apply is **Section (S.) 36(8) of the Children & Families Act 2014 (CAFA 2014):**

“The local authority must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under subsection (7), the authority is of the opinion that—

- (a) The child or young person has or may have special educational needs, and*
- (b) It may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.”*

The test is simply whether the child or young person **may** have SEN and that it **may** be necessary for special educational provision to be made for the child or young person in accordance with an EHC Plan. You will see that this is a very low threshold. If an EHC needs assessment has already been carried out in the last 6 months and you want to request a re-assessment, the LA do not have to consider it. Otherwise, you can apply again whenever you like.

The LA must notify you within 6 weeks of the date of the EHC request.

Make a note of your appeal deadline



Marking any deadlines on your calendar and in your diary is one of the **first things you should do**. Your appeal is time critical which is why noting this down is so important. You must send an appeal form to the SEND Tribunal within **two months** of the final amended EHC plan, or **one month** from the date you obtain a mediation certificate, whichever is the later.

Exception: If either of the deadlines end in August, then you have until the first working day in September to submit the form.

What you will need to submit for your appeal



Local Authority decision letter

A signed and dated letter from the LA giving you the right of appeal to HM Courts & Tribunals Service.



Mediation certificate

A signed certificate after taking part or not - for more information we have a factsheet about mediation and how to gain a certificate.



Completed SEND35a appeal form

With your reasons for making the appeal - the form can be found on the gov.co.uk website. Alternatively google SEND35a.



Evidence documents

To support your appeal - you can add to this later up until the Tribunal's evidence deadline, so don't let this delay your appeal submission.



A list of all the documents

It's helpful to the SEND Tribunal to present your evidence in chronological order and to include a list explaining each document.

Do not send your original documents to the Tribunal. Use photocopies or scanned documents and keep the originals. If you do not have access to a scanner, you can download free document scanning apps onto your phone e.g. DocScan Free. Do not send photos of reports as they can easily cause your report to exceed the Tribunal's 14MB attachment data limit and may not be received.

Where to submit your appeal



Post

It is recommended that any post is sent as recorded delivery.

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

Email



Currently the tribunals preference.

send@justice.gov.uk

Make the email subject 'New Appeal'. There is a 14MB limit for attachments.

Phone

To ask questions/ confirm receipt of appeal.

0300 303 5857

IPSEA 'Refusal to Assess' Pack

IPSEA created a pack which provides further detailed information about your appeal:

<https://www.ipsea.org.uk/Handlers/Download.ashx?IDMF=b006465c-2b25-4e28-839b-6417bfbb2da0>

How to get a mediation certificate?

Mediation aims to help resolve disagreements for children and young people that are being assessed for or have an Education, Health, & Care Plan. Trained mediators remain neutral - they don't take sides or tell anyone what to do. Their role is to help everyone explore new ways to move forward. Choosing not to mediate does not affect your right to appeal to the First-Tier Tribunal (SEND). The Tribunal will not make any assumptions if you have not tried mediation.

To obtain a Mediation Certificate, you must either:

1. **Undertake mediation**, and if this does not settle all of the points in dispute, you will be issued with a certificate confirming you took part in mediation.
2. **Speak to a mediation advisor**, and you will be issued with a certificate confirming you have been told about your right to mediate but you do not want to do so. You will need to obtain a mediation certificate before you appeal a refusal to issue decision.

How to contact Global Mediation:



www.globalmediation.co.uk



sen@globalmediation.co.uk



0800 064 4488 or 020 8441 1355



Global Mediation Ltd (SEN) 8 Lytton Road, EN5 5BY

Top Tips for completing the SEND35a Form



- ▶ Keep it short and to the point.
- ▶ Separate your points into paragraphs.
- ▶ Number your paragraphs or organise them under headings.
- ▶ Refer to any evidence that supports your points with relevant quotes or if you need to refer to a whole report, state the report author, job title/service and date as well as page numbers if possible. (You can send more evidence later.)
- ▶ Refer to the legal issues.



- ▶ Get bogged down on history. If there is a long history of difficulties between you and the LA let the evidence (e.g. letters between you and the LA) speak for itself.
- ▶ Submit any non-relevant evidence. Although you may have many years of reports and emails, to avoid overwhelming the Tribunal and to ensure that they have time to read what is important to your case, only submit the evidence that supports your reasons for appeal.

Where do I start?

Begin by looking at the evidence the LA used to make its decision. In their decision letter, they must set out detailed reasons for why they are not assessing for an EHCP.

- ▶ If the decision seems at odds with the evidence you may need to look no further than the documentation and reports of the LA's own professionals.
- ▶ If the evidence supports the LA's decision you will have to look elsewhere for evidence to back up your case.

How should the evidence inform an EHCP?

A final EHCP must clearly describe your child's needs and the support required; **what must be delivered, how often, for how long, and by whom**. This level of detail is called specificity. Therefore, all evidence informing the EHCP must be clear, accessible, and specific. When reviewing assessment reports, consider:

- ▶ Do they appropriately address outcomes?
- ▶ Are they sufficiently detailed about your child's needs?
- ▶ Is the provision described quantifiable and specific?
- ▶ Avoid vague phrases like; access to, opportunities for, input from, may benefit from.

How can I get specificity into the evidence reports?

If reports lack specificity, you can challenge them. **You are not required to accept reports they believe are inaccurate.** Paragraph 9.47 of the SEND Code of Practice and SEN Regulations 6(4) state that the LA, parent/young person, and the professional must all be satisfied that the advice is sufficient for assessment.

If appealing to the SEND Tribunal, you can request a court order ("request for changes" form) to get specificity added before the hearing. You'll need to explain that a decision about issuing an EHCP can't be made without specific, quantifiable information.

Appealing a Refusal to Assess an EHCP: Summary

The LA must secure an EHC needs assessment if the information collected during an Education, Health and Care Needs Assessment (EHCNA) shows that the child or young person has or may have special educational needs (SEN) and that it may be necessary for special educational provision to be made through an EHC Plan.

Remember, you do not need a formal diagnosis. It is based on the presenting needs.

Allow the evidence you do have to speak for these.

- ▶ Make a note of your appeal deadline as soon as you receive it.
- ▶ Mediation is an informal way to solve problems. Obtain mediation certificate by:
 - ▶ Taking part in mediation, or
 - ▶ Contacting Global Mediation to say you do not want mediation.
- ▶ Ensure you correctly complete the SEND35a form.
- ▶ Keep the appeal form answers clear, organised, concise, and to the point.
- ▶ Refer to the legal issues and your own evidence documents for each point.
- ▶ Do not overwhelm the SEND Tribunal with irrelevant evidence and history.
- ▶ Include evidence of needs & provision, showing the requirement for an EHCP.
- ▶ Make copies of your bundle and keep the originals for yourself.
- ▶ What you need to submit: LA letter, Mediation certificate, Appeal form, evidence, list of documents.

The LA will need to take into account a wide range of evidence, and should pay particular attention to:

- ▶ Evidence of the child or young person's **academic attainment** (or **developmental milestones** in younger children) and **rate of progress**
- ▶ Information about the nature, extent and context of the child or young person's SEN
 - ▶ Evidence of the action **already being taken** by the early years provider, school or post-16 institution to meet the child or young person's SEN
- ▶ Evidence that where progress has been made, it has only been as the **result of much additional intervention and support** over and above that which is usually provided

Evidence must pay particular attention to:

- ▶ The needs of the child or young person
 - ▶ What provision is required to meet such needs
- ▶ About the outcomes that are intended to be achieved by the child or young person receiving that provision
 - ▶ Action already taken by the education provider to try and meet the child's SEN / proof that intervention over and above ordinarily available provision is needed

Sources of evidence:

- ▶ The child's parent or young person
 - ▶ Education provider
 - ▶ Health & Social care professionals
 - ▶ Educational psychologist
- ▶ Anyone else the LA thinks is appropriate
 - ▶ If within or beyond year 9 – advice in relation to provision for preparation to adulthood
- ▶ Any person reasonably requested by the parent or young person

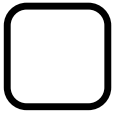
Refusal to Assess EHCP Appeal Checklist

Tick when you've completed each task - Once everything is ticked your appeal will be complete.



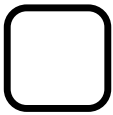
Make a note of your appeal deadline.

Add to calendars, diaries, and set reminders



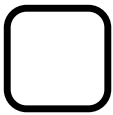
Local Authority decision letter

You must submit this alongside your other documents



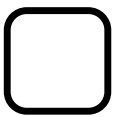
Signed mediation certificate

You must submit this alongside your other documents



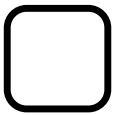
A final version of the EHC plan (if you have one)

Include all the documents listed in 'Section K'



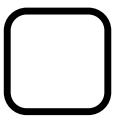
Fully completed SEND35a appeal form

with **all** your reasons for the appeal included



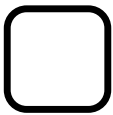
Evidence documents

Include everything that support your appeal



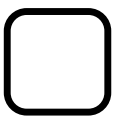
Add a list of all the documents enclosed

This needs to be in chronological order



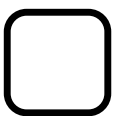
Make scans/photocopies of your appeal bundle

Keep the originals for your records



Register your appeal

Submit a COPY of your bundle to the SEND Tribunal



Submit any further evidence that is relevant

You can do this up until the evidence deadline