

REFUSAL TO ASSESS FOR AN EDUCATION HEALTH & CARE PLAN (EHCP)

The first step to obtaining an EHCP is to request an Education Health & Care Needs Assessment (EHCNA). Once a request has been made (typically by the parent/carer or by the school), the Local Authority (LA) must decide whether to undertake an assessment and must notify you of its decision within 6 weeks of the date of receiving the request. If they refuse to agree to an assessment, the LA must give you their reasons for their decision and must notify you of your right to appeal this decision to the SEND Tribunal.

You must lodge an appeal within two months of the date of the decision letter or one month from the date of a mediation certificate, whichever is later. The LA's decision letter gives you details on how to request a mediation certificate. You do not have to attend mediation before lodging an appeal but you do have to consider it. This means contacting Global Mediation and speaking to an adviser who can then issue you with a certificate to show you have considered mediation. In the decision letter, the LA may have offered you a Way Forward Meeting, which we would advise you request. Way Forward Meetings can be a very useful way of discussing in more detail why the request has been refused and considering whether there is any further evidence that could be submitted and what the next steps are. If further evidence can be submitted the LA may agree to take the request back to panel to reconsider their decision and may then agree to assess, which would avoid the need for an appeal. Mediation is essentially a more formal Way Forward Meeting, so if you agree to a Way Forward Meeting you would not need to attend mediation too and could just request a mediation certificate.

The most common reason for the LA to refuse to assess a child for an EHC plan is that they feel the child's needs can be met using the resources normally available within a mainstream educational setting, and therefore it is felt that it is not necessary to undertake a statutory assessment to secure the support required to meet their needs. However, the legal test for whether the LA should assess a child is actually quite low and is found in Section 36 (8) of the Children and Families Act 2014:

- (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.

Generally there are three different ways you can establish that the above test has been met. You can argue that:

- 1.** An assessment is required to find out what the child/young person's difficulties are and what help is needed.
- 2.** The school may not be able to support the child/young person fully without extra help from the LA.
- 3.** The school has provided all the help they could be expected to provide but the child/young person has not made enough progress.

In regard to point 1 you would need to make the case that advice from a number of different professionals is needed in order to fully understand your child's difficulties. In regard to points 2 and 3 you need to make the case that your child's needs may not be met without an EHCP. You do not have to prove that an EHCP is necessary, only that it may be. For example, an EHCP would be necessary if the school are unable to provide the special educational provision the child needs through their delegated SEN budget, known as SEN support.

Refusal to Assess appeals are routinely decided on paper, meaning there is no hearing which the parties would need to attend. Most parents and young people are happy with this, however, both parties must consent to an appeal being decided on written evidence alone, and an oral hearing must be held if one party requests it.

To lodge a refusal to assess appeal you will need to complete a SEND35A form which can be downloaded from the <https://www.gov.uk> website. When filling out the SEND35A form you will have to answer two questions:

Question 1: Whether the child or young person has or may have SEN?

- Describe any special education needs the child or young person has
- Describe any special educational needs which you consider the child or young person may have which have not yet been fully identified

When answering question 1 it is helpful to send in any supporting evidence you may have, such as assessments and reports from the early years provider, school or college, any evidence from professionals such as an Educational Psychologist or Speech and Language Therapist, and any medical reports which may confirm a diagnosis or the child's needs.

Question 2: Whether the child or young person may require an EHC plan?

- Explain why you think the child or young person may require an EHC plan.

An EHC plan is only required where the child or young person's needs cannot be met through SEN support and so you will need to explain why this may be the case for your child and send in supporting evidence.

Examples of the sort of things to think about for this question include:

- An assessment is the only way to identify what my child's difficulties are and what support is required.
- The setting has provided all the support they can with their delegated SEN budget and my child is still only making little to no progress.
- The setting has provided support above and beyond their delegated SEN budget and this is the only reason my child has made progress.

Once you send in your appeal the SEND Tribunal aims to reply within 20 working days and they will send you a registration letter which gives details of the important dates for the appeal. This includes when the LA are required to respond to your appeal, the deadline to send in any further evidence and the date for the paper hearing. The Tribunal will write to the LA at the same time and they will send them a copy of your appeal paperwork. The LA will then have to submit their response which states whether they are opposing the appeal and if so, why. Any further paperwork you submit after the appeal has been lodged has to be sent to both the SEND Tribunal and the LA and any paperwork the LA submits also has to be shared with you as well as the Tribunal. The LA tribunal team should write to you to acknowledge receipt of the appeal and to confirm their contact details.

In the vast majority of cases the LA concede the appeal which means they have changed their decision and agreed to undertake an EHC needs assessment. If the case does go to a paper hearing the Tribunal will look at all of the evidence that has been submitted and will decide whether the LA has followed the law.

If you win your appeal the Tribunal will order the LA to carry out an EHC needs assessment. If you lose your appeal the LA will not have to carry out an EHC needs assessment. You can make another request for an EHC needs assessment following the decision but please bear in mind you are unlikely to get a different outcome unless you have new evidence or can show that things have changed.

For further information on Refusals to Assess and a Refusal to Assess Pack, please find a Link to IPSEA's website below:

[\(IPSEA\) Independent Provider of Special Education Advice](#)