



IPSEA

Independent Parental Special Education Advice

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My request for an EHC needs assessment has been refused/I have been told there's no point asking for an EHC needs assessment because my child/young person won't qualify. What can be done?

The first point to note is that under s36(8) of the Children and Families Act 2014 an EHC needs assessment **must** be carried out if the Local Authority (LA) thinks that:

- the child or young person has or may have SEN
- 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 from that legal test that there is no requirement for the child or young person to be at a particular level of attainment before they would 'qualify' for an EHC plan or assessment of their needs. Such 'barriers' to obtaining an assessment would represent Local Authority / school policy only and do **not** reflect the applicable legal test, which is set out in s36(8).

If the LA asks for particular forms of reports (such as an Educational Psychologist report) to be produced before an assessment could be requested then this would represent their own (unlawful) 'policy' rather than the law. It is also worth noting that the whole purpose of the EHC needs assessment is actually to assess a child or young person's needs, and there would be no point in requiring there to be assessments / reports available, if they actually need to be obtained as part of the EHC needs assessment process. Similarly, a LA cannot require a parent to show that a school has spent particular sums of money supporting a child with SEN before an EHC needs assessment request could be made – this would be another example of 'policy' rather than the correct legal test.

You could also have a look at paragraph 9.14 of the SEN and Disability Code of Practice 2015, which gives examples of what sort of information the LA might take into account when determining whether to carry out an EHC needs assessment. The Code can be found here:

https://www.ipsea.org.uk/file-manager/SENlaw/send_code_of_practice_january_2015.pdf

The information the LA might look at would include:

- 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

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- 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

Remember that these are just examples however, and the legal test of when a LA must carry out the assessment is simply that set out above – namely that the child or young person may have SEN and it may be necessary for special educational provision to be made in an EHC plan (which is not necessarily a very ‘high’ legal hurdle).

There is additional information about the EHC needs assessment and EHC Plans on the web site here:

<http://www.ipsea.org.uk/what-you-need-to-know/ehc-needs-assessments>

<http://www.ipsea.org.uk/what-you-need-to-know/ehc-plans>

If the Local Authority were to refuse a request for an EHC needs assessment, they must inform you of this refusal within 6 weeks of the date of the request for assessment and you would have the right of appeal to the First Tier Tribunal.

There is also a downloadable ‘Refusal to Assess Pack’ on our web site that will provide useful information in the event that a request is refused:

<http://www.ipsea.org.uk/find-resources?q=Refusal+to+assess+pack>

You can also get advice and support in preparing an appeal through our Tribunal Help Line and you can book a call to speak with one of our Tribunal Helpline volunteers here:

<https://www.ipsea.org.uk/contact/advice-and-support/tribunal-helpline>

Remember that an EHC needs assessment can be requested at any time by a parent or young person, and you do not have to wait for the school or college to do so. It is only if a LA has actually **carried out** an EHC needs assessment within the last 6 months that they could lawfully refuse a request for another one. If they hadn’t carry out the assessment and had just refused to do so, a parent or young person could make another request for assessment, and this might be helpful if you have missed the time limits for appealing to the SEND Tribunal about the LA’s previous refusal to assess.

You might also wish to read our “SEN support at school factsheet” which accompanies this factsheet and sets out the duties which schools towards children with SEN. If you think that the school could be doing more to support your child’s needs, in line with their legal duties, then you could ask for a meeting with the school SENCO to discuss how such support could be put in place, pending a decision on the EHC needs assessment from the LA / outcome of any appeal against a refusal to carry out the assessment.

<https://www.ipsea.org.uk/contact/advice-and-support/advice-line>

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