

Appealing a Refusal to Issue an EHCP Decision

Information Summary Sheet



I've just received a Refusal to Issue, 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 issue 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 issue an EHC Plan and you wish to lodge an appeal, then you will need to follow the correct legal process.

Why can the Local Authority refuse to issue an EHC Plan?

Having an EHC needs assessment does not guarantee an EHC plan being written. The legal test the Local Authority must apply is in **Section (S.) 37(1) of the Children & Families Act 2014 (CAFA 2014)**.

The test is simply whether it is **necessary** for the child or young person to receive special educational provision through an EHC Plan:

“Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan –

- (a) the local authority must secure that an EHC plan is prepared for the child or young person, and**
- (b) once an EHC plan has been prepared, it must maintain the plan.”**

The LA can **only** refuse to issue an EHCP if the information and advice gathered during the EHC assessment determines that an EHCP is not necessary.

The LA must notify you within 16 weeks of the date of the EHC request. When appealing this decision, the duty is on the parent or young person to prove that the school's ordinarily available provision is not enough. The SEND Tribunal can either; dismiss the case, order the LA to issue an EHCP, or refer the case back to the LA to reconsider their decision in light of observations made by the SEND Tribunal.

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 SEND35 appeal form

With your reasons for making the appeal - the form can be found on the gov.co.uk website. Alternatively you can google SEND35.



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

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

Appealing a Refusal to Assess an EHCP: Summary

The LA must issue an EHC Plan if the information collected during an Education, Health and Care Needs Assessment (EHCNA) shows that it is necessary for special educational provision to be made in accordance with an EHC Plan.

You should remember that during appeal, it is your responsibility to prove that the school cannot meet the needs without an EHCP.

- ▶ 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 a mediator to say you do not want mediation
- ▶ Ensure you correctly complete the SEND35 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.

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

Specificity:

A final EHCP must describe the needs and support in enough detail so that the reader can clearly tell what must be delivered, how often, how long for, and by whom.

All evidence informing it must be clear, accessible and specific. It should be sufficiently detail all of your child's needs. Avoid woolly phrases such as: "access to", "opportunities for", "input from", "may benefit from" etc.

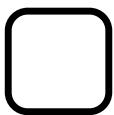
Refusal to Issue EHCP Appeal Checklist

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



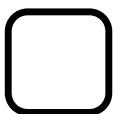
Make a note of your appeal deadline.

Add to calendars, diaries, and set reminders



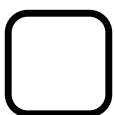
Local Authority decision letter

You must submit this alongside your other documents



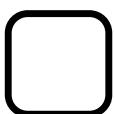
Signed mediation certificate

You must submit this alongside your other documents



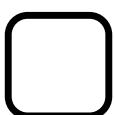
A final version of the EHC plan (if you have one)

Include all the documents listed in 'Section K'



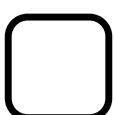
Fully completed SEND35 appeal form

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



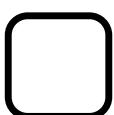
Evidence documents

Include everything that support your appeal



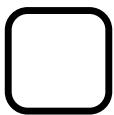
Add a list of all the documents enclosed

This needs to be in chronological order



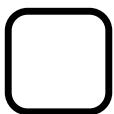
Make scans/photocopies of your appeal bundle

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