

Filling in the SEND35A appeal form

This form must be complete using **black** ink/ text only.

You can download the SEND35 from [HERE](#)

Section 1: Who

Enter your child's name, gender, and date of birth.
If you are the young person, enter your own details

Section 1: Who is the appeal about?

- ☐ A **child** under 16 years old
- ☐ A **young person** aged 16 or over and under 25 years old

The child or young person's surname

The child or young person's first name(s)

Gender

☐ Male ☐ Female ☐ Other

Date of birth

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Section 2: Why

You will need to explain why you think the LA must assess your child, or you as a young person. This is called your reasons for appeal.

It is often best to give your reasons for appeal on a separate sheet, referring to it on the form. This helps prevent information being lost.

Use this section to explain why you think the Local Authority's decision is wrong, describing the child's actual or potential SEN and why an EHCP may be needed.

Section 2: Reasons for appeal

It is important to tell the Tribunal why you disagree with the LA decision not to secure an EHC assessment and refer to any written evidence you have to support your case.

Legal Test the Tribunal will apply

The legal test for deciding whether to secure an EHC needs assessment is contained in the Children and Families Act 2014 s. 36(8).

The Tribunal will decide two questions in the appeal:

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

Describe any special educational needs that 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:

Question two: 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:

What are Special Educational Needs (SEN)?

A learning difficulty and/or disability which requires Special Educational Provision:

- **Significantly greater difficulty learning** than majority of others the same age, or
- Impairment has a **substantial long-term adverse effect** on carrying out day-to-day activities, including the making use of generally provided facilities in mainstream institutions.

This means that you **do not** have to have a formal diagnosis to request an EHC needs assessment. Deciding whether an assessment would be necessary is based on the **presenting needs and difficulties**. Any diagnosis by a professional is excellent evidence but you do not have to have this. (SEN is defined under Section 20 CAFA 2014.)

Section 3: Local Authority (LA) & Mediation

Enter the name of your LA and the date on the decision letter you're appealing against.

Section 3: Making the appeal

LA decision

Which local authority made the decision that you are appealing against?

What is the date on the decision letter from the local authority?

Late appeal or no mediation certificate

You must send your appeal to the Tribunal no later than 2 months from the date of the Local Authority's decision letter or within one month of the date of the mediation certificate, if later.

If the appeal is submitted to the Tribunal more than 2 months after the date of the Local Authority's letter or one month after the date of the mediation certificate, you must set out in writing the reasons for the delay and why you think the appeal would succeed if time for making the appeal is extended. If you do not do so, the papers will be returned to you without being registered or seen by a Tribunal Judge.

If you do not have mediation certificate you must set out in writing why you have not been able to get one. If you do not give an explanation, the papers will be returned to you without being registered or seen by a Tribunal Judge.

☐ My appeal is being made late

☐ I do not have a mediation certificate

Please explain why this has happened:

If it is a late submission of appeal, (after your deadline) then you must set out your reasons why it is late here.

Section 5 & 6: Who is involved in the appeal

Enter your name and contact details here. Include the details of anyone else who has parental responsibility, if possible; if you have a reason for not wishing to include this information, this must be stated.

You also have the opportunity to include anyone who is acting as an advocate/representative.

Section 5: Who is making the appeal?

I am making this application to appeal.

Please tick only one of these options – see page 1 for explanations:

- ☐ Parent or other – on behalf of a child under 16 years old
- ☐ Young Person – aged 16 and under 25 years old
- ☐ Alternative Person – making an appeal in the 'best interests' of a young person who does not have the Mental Capacity to bring an appeal themselves

A. Details of first person making the appeal

☐ Mr ☐ Mrs ☐ Miss ☐ Ms

☐ Other

Surname

First name(s)

If you are not the Young Person, what is your relationship to the child or Young Person e.g. parent, foster parent

Email address

Home address

Postcode

Daytime phone number

Mobile phone number

Section 7: Accessibility

Section 7: The hearing – your needs and requirements

Please tell us here about any special needs you may have which we need to take into account when arranging your hearing. This might be things such as hearing loops or disabled access.

Question 1 – Your needs

Do you have any special needs?

☐ Yes ☐ No

If Yes, please tell us about this in the box below

Question 2 – Your signer or interpreter and language requirements

Do you require an interpreter or signer to assist you at the hearing?

☐ Yes ☐ No

If Yes, please tell us the language and dialect required below

Language or type of sign language interpreter

Dialect

We will arrange for a professional interpreter to be present at the hearing.

You will have chance to add details of any special requirements to make the process accessible to you: say here if, for instance, you need documents translated, wheelchair access, a reader or a signer, or cannot manage negotiations over the phone.

Grounds for Appeal DRAFT

Feel free to use this draft of examples as a template for your reasons of appeal and include all the points that apply to you. The reasons you could use are not limited to the examples given here. This can be edited and built upon to suit your situation. Remember that you don't have to have a formal diagnosis.

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

Describe any special educational needs that the child or young person has:

• My son/daughter, [name] is diagnosed as having [diagnosis]. I attach his/her diagnosis report. In addition, he/she has: **(insert from list below adding appropriate details e.g. diagnosis, date of, therapy given, progress, existing needs)**. Speech and language difficulties (see report attached), Sensory difficulties (see report attached from occupational therapist), Cognitive difficulties, Physical difficulties, Sleep difficulties, Eating difficulties, Anxiety issues, Behavioural issues, Lack of self-help skills.

Question One (part 2): Describe any special educational needs which you consider the child or young person may have which have not yet been fully identified:

• My son/daughter, [name] is awaiting assessment for diagnosis of [condition(s)]. I attach [evidence of condition/upcoming appointment]. In addition, he/she has: **(insert from list below adding appropriate details e.g. diagnosis, date of, therapy given, progress, existing needs)**. Speech and language difficulties (see report attached), Sensory difficulties (see report attached from occupational therapist), Cognitive difficulties, Physical difficulties, Sleep difficulties, Eating difficulties, Anxiety issues, Behavioural issues, Lack of self-help skills.

Question Two: 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

• My son/daughter attends [name of current/latest school]. I attach his/her latest pre-school/school report. That placement agrees with me that [name] needs/may need special educational provision to be secured through an Education and Health Care Plan. On the [date of letter received] I received confirmation from the LA that it was not going to carry out an EHC needs assessment for my son/daughter. Its failure to do so is a breach of Section 36(8) of the Children and Families Act 2014. The available evidence shows that my son/daughter is not making appropriate progress. **(List the reasons/examples – developmental milestones, academic attainment etc.)** In addition, the ordinarily available provision is clearly insufficient to meet my son's/daughter's needs. [name] needs much greater support in order to fully access his/her education. **(Insert any provision you say is needed above that which is ordinarily available)**

I therefore ask the Tribunal to:

- A. Find that my son/daughter has/may have special educational needs
- B. Find that my son/daughter requires/may require special educational provision to be secured through an Education, Health and Care Plan
- C. To hold that my son/daughter requires an EHC needs assessment; to fund further investigation in order to fully identify his/her needs and therefore exactly what special educational provision he/she requires
- D. Find that the LA are in breach of their statutory duty to provide an EHC needs assessment of my son/daughter as indicated in Section 36(8) of the Children and Families Act 2014.
- E. Order the LA to carry out a statutory assessment of the SEN of my son/daughter, [name].

Useful sources of evidence

Please note this is not an exhaustive list

- ▶ **The Health Service** e.g. speech and language therapist, CAMHS, occupational therapist, paediatrician, GPs, medical professionals, physiotherapists, psychiatrists etc.
- ▶ **Evidence from the child or young person's current school or other institution** e.g. attendance records, current and previous pupil passports/ IEPs, communication with school (emails, letters), meeting minutes, education psychologist reports, pupil progress reports, exclusion letters, part time timetable risk assessments, incident reports, after school clubs, school trip risk assessments. Home/school diaries.
- ▶ **Privately obtained reports from independent professionals**
These can be very expensive so you may wish to consider:
 - ▶ If you qualify for legal aid: <https://www.gov.uk/check-legal-aid>
 - ▶ Voluntary organisations that specialise in a particular disability may be able to provide an assessment at a modest cost.
- ▶ **During the EHC needs assessment, the LA should have sought information and advice from a range of professionals including an educational psychologist.** The LA should have obtained an up-to-date report from a particular professional and if they failed to do so, you should ask them to do this. If they refuse, you can ask the Tribunal to order that they obtain the report needed – use the “Request For Change SEND7” form: <https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>
- ▶ **Written statements from those involved with the child or young person** e.g. teachers, someone who knows the child or young person from outside school such as at a youth club or a carer, the child/young person (written by themselves if they are able to do so) or the parents (to ensure they get all their points across).
- ▶ **Video/ audio evidence** (this should be short and to the point. Video evidence more than 10 minutes is unlikely to be watched). Attach with it a statement of the facts the evidence seeks to establish.
- ▶ **Published evidence or references to relevant research and findings.**
Be aware of relying on this too much as the best evidence is going to be primary evidence about the child/ young person.
- ▶ **Examples of the child/ young person's work and progress overtime.**