



Appeal Process - Refusal to Assess

See our Information Sheet called: “Appeal Process – How to complete a SEND 35a”

IPSEA – the **Independent Provider of Special Education Advice** have created a [refusal to assess pack](#) which gives a detailed guide to preparing for and carrying out a refusal to assess appeal.

A refusal to assess appeal used to be ‘on the papers’ only, meaning there was no hearing to attend. This has now changed however, as in all appeals, you have the option to attend a hearing if you wish.

When appealing a Refusal to Assess you complete a SEND 35a form. Section 4 on the SEND 35a states:

‘The Tribunal can decide the appeal on the papers without an oral hearing if you and the LA consent and the Tribunal concludes that it is able to decide the case on the papers. The Tribunal can list paper hearings at short notice, and if you consent to a paper hearing, it may lead to an earlier decision being made in the appeal’.

Therefore, you can tick ‘I consent to the appeal being concluded on the papers without an oral hearing’ to have the Judge look at all your evidence on papers only.

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 section 36(8):

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.*

Your right of appeal

The letter from your LA turning down a request for an EHC needs assessment (EHCNA) must arrive within six weeks of that request being made (day 1 is when you the LA received your request for an needs assessment) and must tell you about:

- (a) your right to appeal that decision;
- (b) the time limits for doing so;
- (c) information about mediation;
- (d) the availability of:
 - (i) disagreement resolution services; and
 - (ii) information and advice about matters relating to the special educational needs of children and young people.



The SEND Tribunal could waive the two-month deadline if all this information is not provided, and you would be allowed to appeal late.

The LA must also tell you when they refuse a request for assessment from a school or institution or if the LA itself has otherwise become aware that a child or young person may have SEN and has then decided not to conduct an EHCNA.

In both these cases it must make the decision within six weeks of the request or of becoming aware. Then the LA will inform you and give you the right of appeal to the SEND Tribunal (by sending the letter mentioned above).

This is an appeal under section 51(2)(a) of the Children and Families Act against a decision made under section 36 of the Act. You will not have the right of appeal if the LA has carried out an EHCNA in the past six months.

You can appeal as the parent or the young person over the age of 16 is able to apply in their own name.

A parent is either a birth parent, someone who has acquired parental responsibility or someone who has care of the child (e.g. a foster parent or grandparent with whom the child lives).

Appeal deadlines and mediation

To check your deadline for sending your appeal to the SEND Tribunal, first, look at the date on the letter from the LA – **make a note of the date two months after this.**

You have 2 months to obtain a mediation certificate and make your appeal. When you have your mediation certificate your appeal date is one month from the date on the mediation certificate or 2 months from the date on the decision letter, whichever is the later.

The law says you have to consider whether to enter mediation before you can register your appeal.

This means you must ring the number for Wirral Mediation and Disagreement Resolution Service at WIRED - 0151 522 7990 (option 2) who are the Independent mediation organisation that Wirral use. You then talk to the mediation advisor and get a certificate from them saying you have done so. This is normally emailed to you within 3 working days.

Considering the appeal

As stated you do not have to engage in mediation to register your appeal, only consider it and if you have had a lot of discussions already with your LA you may feel it would be of little use and you want to save time, then get your certificate and appeal right away.

Going for mediation

Some parents also feel that mediation gives them more time to appeal (as mediation has to happen within 30 days and if it doesn't then a certificate is issued after this time and again you have 30 days (1 month) after the date on the mediation certificate to appeal).

Filling out the appeal form

See our guidance: How to complete the SEND 35a Form.

Giving your reasons for your appeal

This is where you set out why you think the LA must assess your child, or you, as a young person. Try to put in everything you need to say, your full case, at this point (Section 2: Your reasons for appeal will help you with this). You must send in enough information for the LA to be able to respond.



DO

- 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 backs up your points. (You can send more evidence later and should say so, if for instance you will be getting a speech therapy report because the LA has not obtained one.)
- Refer to the legal issues.

DON'T

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.

What to send in with your form

It's actually quite straight forward! With the completed and signed form (a SEND 35a) send the SEND Tribunal the following:

- **A copy of the letter the LA sent you that told you of its decision**
- **Your mediation certificate**
- **Your evidence for your child needing assessment / Your reasons for making the appeal –** *(this can include the paperwork you sent in with the EHC Needs Assessment and the Request Form as well as any new reports / letters / advice from professionals that you may have received since submitting the original request for assessment to the LA).*
- **A document listing all your items of evidence**

Please remember NOT to send original documents, send photocopies and keep a copy of everything you send, including the form.

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

Timetable of the appeal process

LA sends a decision letter to you. Your appeal must reach the SEND Tribunal within **two months** of the date on the letter or **one month** from the date you obtain a mediation certificate, whichever is the later.

After you send in your appeal, the SEND Tribunal replies within **10 working days** of registering your appeal.

In this response, the SEND Tribunal tells you about important dates. It tells you when LA are required to respond to your appeal, gives you a deadline to send further information and give you the Hearing date or when SEND Tribunal will be considering your case and making a decision (if your case is being heard on papers). This will be a window of time between two dates around ten days apart.

At the same time, the SEND Tribunal writes to the LA, sending them a copy of your appeal documents.

LA submits its response to the SEND Tribunal **within 30 days**. The LA must state whether it opposes your appeal and why. They must also send you a copy of its response at the same time: **tell the SEND Tribunal if you do not get it within the 30 days**.

Ensure that any evidence you didn't send in with your appeal form gets to the SEND Tribunal by any deadline it gives you and send a copy to the LA at the same time.

At least **10 working days** before considering your appeal and making a decision, the LA should send you and the SEND Tribunal the 'bundle', a page-numbered set of the documents the SEND Tribunal has been sent in the case.



Generally, you will receive the decision and reasons in writing **within ten working days** of the SEND Tribunal considering your case.

If the SEND Tribunal decides in your favour, the LA has **four weeks** to begin the EHC needs assessment.

If you feel there has been an error or have some other serious reason for thinking the decision is wrong, you have **28 days** to apply for a Tribunal review.

Expected progress

Section 9.14 of the Code of Practice states:

When considering whether an EHC needs assessment is necessary for a child/young person the LA should consider whether *there is evidence that despite the early years provider, school or post 16 institution having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child or young person the child and young person has not made expected progress.*

To inform their decision 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 developing 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 persons' SEN.
- Evidence that where progress has been made, it has only been as the result of additional intervention and support over and above that which is usually provided.
- Evidence of the child's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet these by other agencies, and
- Where a young person is aged over 18, the LA must consider whether the young person requires additional time in comparison to the majority of others of the same age who do not have special educational needs to complete their education or training. Remaining in formal education or training should help young people to achieve education and training outcomes, building on what they have learned before and preparing them for adult life.