



Refusal to assess appeals

There are limits to what the SEND Tribunal can decide. If you win your appeal it can order your LA to make an EHC needs assessment. It cannot order the LA to draw up an Education, Health and Care plan (EHC plan) at the same time and it cannot order a school to make provision (extra help for you or your child) if it concludes that an EHC needs assessment is not needed.

The SEND Tribunal is governed by the law, both the Act of Parliament and its associated regulations, and has to follow the interpretation of that law by higher courts in judgments about previous SEN disputes. The SEND Tribunal must 'have regard' to the SEN and Disability Code of Practice; which advises schools and LAs on identifying and making provision for children with SEN. The SEND Tribunal is not bound to follow the Code to the letter but it generally accepts the Code's guidance in coming to its decisions.

The SEND Tribunal looks at the evidence put before it and decides whether the LA decision followed the law and the Code. It will also make a decision based on what is right for the child at the date of the hearing.

Your right of appeal

The letter from your LA turning down a request for an EHC needs assessment must arrive within six weeks of that request 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.

Your LA must also tell you when it refuses 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 EHC needs assessment. In both these cases it must make the decision within six weeks of the request or of becoming aware and inform you of it and that you have a right of appeal to the SEND Tribunal.

To be able to appeal, you must be a parent or a young person over the age of 16. In education law 'parent' means you are either a birth parent, have acquired parental responsibility or have 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. This is the deadline by which you must register your appeal with the SEND Tribunal.

However, this deadline may be changed when you receive a mediation certificate.

The law says you have to consider whether to enter mediation before you can register your appeal so at the very least you must ring the number the LA gives you (there should be alternatives if you cannot use a phone), talk to a mediation adviser, and get a certificate from them saying you have done so. 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, get your certificate, and appeal right away. If you have never had a proper talk with the LA about why they have refused assessment, mediation may help. You might also consider it to give yourself more time to appeal as your deadline for registering an appeal changes: your deadline then becomes two months from the date of the decision letter, or one month from the date a mediation certificate is issued, whichever is the later. You may well want to talk to SENDIASS about things to be aware of before going into a mediation session.

The SEND Tribunal may well waive the two-month deadline if all this information is not provided and you would be allowed to appeal late, If you are sending in your

appeal from later, you will need to provide reasons why this has happened and also why you think the appeal would succeed if time for making the appeal is extended.

Mark any deadlines on your calendar and in your diary. (If the two months/one month ends in August you have until the first working day in September to get the form to the SEND Tribunal.) If you have missed your deadline, get advice from IPSEA's Tribunal Helpline.

Filling out the appeal form

In the boxes, fill in:

- Your child's name and date of birth, or yours if you are a young person
- Your name and address
- Details of anyone else who has parental responsibility
- The name of your LA and the date you were informed in writing that they would not carry out an EHC needs assessment
- 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.
- In the appropriate section of the form, say that you have asked the LA for an EHC needs assessment, but it has refused
- The reasons for your appeal: it is often easier to put these on a separate sheet and write 'See separate sheet headed Reasons for Appeal' in the box on the 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 to why you believe an assessment is needed. 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

With the completed and signed form 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
- A document listing all your items of evidence Don't send original documents, send photocopies, and keep a copy of everything you send, including the form.

Evidence

It is important to obtain any written evidence as soon as you can. It is best to send in all your written evidence with your appeal form because this means you have the main substance of the case set out with supporting evidence right from the start and you may discover more about the LA's arguments if it is able to respond fully. If you have a good case and evidence, the LA may give in rather than fight the appeal.

If you think you need to send in evidence later in the process, tell the SEND Tribunal what you expect to obtain and when and submit it by the deadline you are given.

If you are having difficulty getting information which is relevant to your case from the LA, you can write to the SEND Tribunal explaining what the document is and ask the SEND Tribunal for a 'direction' to make the LA release the document: contact the SEND Tribunal and ask for a 'Request

for Changes' form or download it from the SEND Tribunal site. Unless the LA has a good reason for not providing the document the SEND Tribunal will order the LA to release it.

Timetable of the appeal process

- LA sends 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 day after registering your appeal.
- In this response, the SEND Tribunal tells you about important dates. It tells you when the LA are required to respond to your appeal, gives you a deadline to send further information and tells you when the SEND Tribunal will be considering your case and making a decision. 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.
- The LA submits its response to the SEND Tribunal within 30 days of receiving your appeal documents from the SEND Tribunal. The LA must state whether it opposes your appeal and why. The LA must 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. If necessary, contact IPSEA for advice.

Working days do not include Saturdays, Sundays, bank holidays, any day between 25 December to 1 January, or any day in August

Making your case

The LA has turned down your request for an EHC needs assessment. How do you begin challenging this? The previous section gave you a guide to the type of evidence you will need, but what exactly are you trying to prove?

The law and your case

The Act says that an LA must identify and make an EHC needs assessment of those children and young people in their area who have or may have special educational needs and who may need an EHC plan.

Although plans are called 'Education, Health and Care plans' they cannot be triggered by health and care needs, only educational ones.

This means you will need to convince the SEND Tribunal that an EHC plan may be necessary to provide the right educational help for your child or you yourself as a young person.

Generally there are three ways of establishing this. You can argue that:

1 a full assessment is the only way to find out what the difficulties are and what help is needed;

2 the school/institution may not be able to supply all the educational help needed unless it receives extra help from the LA;

3 the school/institution has provided all the help that could be expected but the child or young person has not made enough progress.

Now you need to plan your case around the points which fit your case.

You need to make the case that advice from a number of different professionals is needed to fully understand your child's difficulties (or yours if you are a young person). In other words, professionals do not yet understand enough about the difficulties and only a full investigation can help everyone understand the nature and severity of the difficulties and decide what help is needed. Often this is not enough on its own to persuade the SEND Tribunal. You may also have to show that they may need an EHC plan if their needs are to be met.

You need to make the case that the needs may not be met without an EHC plan. You do not have to prove that an EHC plan is necessary, only that it may be necessary. The law says that where an LA needs to secure the provision needed by a child with a learning difficulty, then the LA must draw up and maintain an EHC plan. In many cases both approaches will apply. Whichever you decide fits your case best, keep going back to the points as you plan your case to make sure that you are focusing on what you have to demonstrate to the SEND Tribunal.

What if the school/institution could do more?

An appeal against a refusal to assess is easiest if the early years provider, school or post-16 institution backs you, but this is not essential. It may be harder if you believe that lack of progress is because of the failure of the early years provider, school or post-16 institution to provide help that is well within its resources. There are some cases, however, where the SEND Tribunal can decide it is necessary for the LA to issue an EHC plan just because the early years provider, school or post-16 institution won't or can't make provision. This can occur in a variety of situations. Often it is where the school or other setting has a different understanding of the difficulties to yours and refuses to increase the help. But it could be the result of in-setting factors such as staffing problems, where inspectors have found the setting is

failing to provide a proper education, or where the special educational needs budget has been spent on something else.

Sometimes the early years provider, school or post-16 institution will say that it has done all it can but the LA says it hasn't. This leaves you or your child in a difficult position. You may be unsure who is right. If you are dealing with a school you could begin by asking what it actually gets as funding for SEN and how that is used. Maintained schools, including maintained nursery schools and academies, must publish a great deal of information in their SEN Information Reports, but that information does not go into details of funding and you need to find those out.

You can also ask the LA what help it normally expects local schools to provide for children with your child's learning difficulty.

The LA has to explain, on its website as part of its 'Local Offer' what help it expects local and out-of-area early years providers, schools, alternative education providers and post-16 institutions to provide for children with SEN. It also has to explain its criteria for assessment. (See section 4.3: Schools' and LAs' obligations to publish SEN information for the legal requirements of local offers.) If it has failed to provide this information or has done it in an unhelpful way, you may have to press the LA for information.

Some authorities may say they never issue EHC plans for children and young people in mainstream schools or for children and young people with a particular disability, or for anyone who does not fall into the bottom 2 per cent of abilities. These are blanket policies and are unlawful and the SEND Tribunal will know this. The Code also makes this clear at paragraph 9.16:

"Local authorities must not apply a 'blanket' policy to particular groups of children or certain types of need, as this would prevent the consideration of a child's or young person's needs individually and on their merits."

Your reasons for appeal

When you lodge your appeal with the SEND Tribunal you will be asked to give your reasons. Although you can provide evidence at a later stage, this is the time to give

your arguments. Now set out your reasons to go with your appeal form, using the points that fit your case, giving at least a little detail about why you believe this.

For example:

Example 1

A full assessment is the only way to identify my child's difficulties and find out what my child needs. Jack has been excluded from school twice in the past term.

Although he receives a lot of extra help for his behaviour, Jack doesn't seem to understand what he has done wrong. I believe difficulty with understanding school work may be a factor but nobody seems sure about why Jack has difficulty learning or why he behaves as he does.

Example 2

The school could not normally give all the educational help my child needs unless it receives extra help from the LA. The nursery school has had to provide much more help for Riath than they would normally provide for children with special needs without EHC plans. The staff at the nursery believe Riath will need an EHC plan to manage mainstream school.

Example 3

The school has been able to give my child all the help that could be expected and she has made progress, but only with a great deal of extra help. Now she is coming up to the year she's 16, the college she wants to go to cannot do all the things she needs without getting extra help.

Now you need to plan how you can back up your point of view with evidence. The SEND Tribunal will decide your appeal on the evidence that you and the LA put before it so it is vital that you produce the best possible evidence.

Evidence about difficulties

Begin by looking at the evidence the LA used to make its decision. This is likely to include documentation from the early years provider, school or post-16 institution, such as school/college reports; the records of any assessments done by the early years provider, school or post-16 institution, what they then did and what effect that

had; any advice from the LA's educational psychologist or other professionals who may have been involved. If the decision seems at odds with the evidence you may need to look no further than the documentation and reports of the LA's own professionals.

If the evidence supports the LA's decision you will have to look elsewhere for evidence to back up your case. Reports from professionals such as educational psychologists can be extremely important to your case but they can also be very expensive.

Other sources of written evidence may be available from:

- Teachers: ask them to be precise and to quantify exactly what is needed for your child.
- Health service, e.g., speech therapist, paediatrician, clinical psychologist or occupational therapist may write a report. Get your GP to refer you.
- Others involved with you or your child, e.g., social workers, youth workers, careers advisers.
- Information from voluntary groups relating to the learning difficulty/disability concerned.
- References to relevant research and findings.
- Extracts from books, magazines etc.
- School reports, including results of national tests and assessments.
- The school/college's own assessments and review reports.
- Home-school diaries.
- Your own evidence: for example, has a younger brother or sister overtaken your child? Is he or she anxious about going to school? Do you get bed-wetting, particularly in term time?
- Evidence from your child or the young person, written via a third party when necessary.

- Your or your child's school/college work if this demonstrates a point you want to make, such as the limited progress they have made, or a particular difficulty which is in dispute.
- If there has been little progress over a period of time, it sometimes makes it clearer if you can show this visually by a chart or graph. You may also be able to show uneven achievement between one particular subject or skill and another.
- Information from the school/college record. You have a legal right to a copy of this. Put your request in writing to the chair of the governing body at the school or the equivalent for a college. You may be charged for photocopying. The record includes school/college reports, attendance record and details of any exclusions. If behaviour is a difficulty, the disciplinary record may help you show whether this is getting worse, whether for instance the school and your child needs more help

The Code says that LAs should look for evidence of a child's progress when deciding whether to make an EHC needs assessment. The suggestions listed above may help you to demonstrate that your child's progress is slow or uneven, or that they have complex needs involving more than one difficulty. The Code says your child's attainment is a factor, but this must be considered in the context of their peers' attainment, their progress over time and what is expected of your child's performance. If you can show, for example, that their performance in some areas is much lower than other areas or below what their general intelligence indicates is possible, then this should be a

(g) support that is available for improving the emotional, mental and social development of pupils with special educational needs.

4. In relation to mainstream schools and maintained nursery schools, the name and contact details of the SEN co-ordinator.

5. Information about the expertise and training of staff in relation to children and young people with special educational needs and about how specialist expertise will be secured.

6. Information about how equipment and facilities to support children and young people with special educational needs will be secured.

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