

Refusal to Assess Appeal

It's important to fully understand why the local authority reached this decision. It's always a good idea to continue talking to the local authority about your concerns or any questions you have. Before appealing you must firstly consider mediation, this can be useful for example, where you have some additional information or a new report you would like to share with the local authority. It is possible that with new information the local authority will agree to reconsider their decision – and may avoid an appeal.

Is this my only opportunity to Appeal?

You should not feel pressured to appeal as you may re-request an Education, Health and Care needs assessment at a later date, allowing time for further strategies or support to be tried.

The Children & Families Act 2014 says

“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.” (36.8)

So, what does this mean?

Your case needs to satisfy these two conditions (known as the legal tests) in order for a successful outcome. The important thing to note here is the use of the word ‘may’ in both these tests – the child ‘may’ have SEN and ‘may’ need an EHC plan. Usually the first of these (a) is not in dispute and the local authority will likely be relying on the second (b) of these legal tests. You do not need to evidence that your child/young person definitely needs an EHC plan. The purpose of this type of appeal is to establish whether the local authority should carry out an EHC needs assessment.

You have the right to mediation and to appeal this decision. You will need to consider mediation first. Our factsheet about [Mediation](#) explores this further.

Evidence

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 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.
- Home–school diaries.
- Your own evidence: for example, has a younger brother or sister overtaken your child? Are they anxious about going to school?
- Evidence from your child or the young person, written via a third party when necessary.

Outcomes of a Refusal to Assess Appeal

If your appeal is successful, the Tribunal can order the LA to carry out an EHC needs assessment. It cannot order the LA to draw up an EHC plan or make orders about what a plan should say. It cannot make any orders or recommendations with regard to health and/or social care. Your LA must start the assessment process within two weeks of the Tribunal's order.

If your appeal is not successful, the LA will not have to carry out an EHC needs assessment. The SEND Tribunal cannot order a school to make provision through SEN Support if it decides that an EHC needs assessment is not needed. However, the school should continue to support your child through the SEN Support framework. You can start another request for assessment immediately, but you are unlikely to get a different outcome unless you can show that things have changed, or that new evidence is available. You should keep careful records over the coming months of the support that your child is receiving, the progress they are making, and the difficulties they are experiencing, so that you will have the evidence to support a new request if necessary.

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