

# Refusal to Issue an EHC Plan - Appeal Information

The 'Refusal to Issue an EHC Plan' decision letter from the LA will explain your right to mediation and appeal. It is important to fully understand why the LA reached this decision. It is always a valuable idea to continue talking to the LA about your concerns, or any questions you have about the reasons for their decision. Further information will help you decide whether to appeal and will be key when building your case. Before appealing you must consider mediation. This can be useful for example, where you have some extra information or a new report you would like to share with the LA.

## What the law says

The SEND Code of Practice 2015 says 'Where, despite appropriate assessment and provision, the child or young person is not progressing, or not progressing sufficiently well, the local authority should consider what further provision may be needed. The local authority should consider:

- Whether the special educational provision required to meet the child or young person's needs can be provided from within the resources normally available to mainstream Early Years providers, schools, and Post-16 institutions, or
- Whether it may be necessary for the local authority to make special educational provision in accordance with an EHC plan' (9.55)

## So, what does this mean?

In reaching their decision the LA should consider:

- the information gathered during the EHC Needs Assessment
- the child or young person's SEN
- the Special Educational Provision (SEP) being made

Where the child or young person is not making expected progress, despite appropriate provision, they should consider:

- any further SEP needed
- whether the required provision could be provided from within the resources normally available to the education setting or
- whether it is necessary for the LA to make SEP in accordance with an EHC plan Independent Provider of Special Education Advice (IPSEA) has a refusal to issue pack. This provides advice for parents and young people about appealing to the Special Educational Needs and Disability (SEND) Tribunal: [IPSEA 'Refusal to Issue an EHC Plan'](#) pack.

## Evidence to consider gathering and submitting with your appeal

- Reports from professionals about required provision.
- Evidence if school are saying they cannot meet child's needs.
- Attendance records
- Records of any exclusions Any records from school can be gathered by making a 'Subject Access Request'.

## Witnesses

The best evidence about a child or young person's SEN and the SEP required is usually from a professional in the relevant field and knows them. The best evidence from a professional is to have a written report in the evidence bundle and for them to be a witness at the hearing. This gives the SEND Tribunal an opportunity to consider their evidence beforehand, and then to ask any follow up questions. The witness can also respond to points against the appeal raised by the LA or their witnesses. In appeals against a 'Refusal to Issue an EHC Plan', it is best to have someone from the school or setting as a witness and not to rely on written evidence alone. This will usually be the Head Teacher or Principal, or the SEN Coordinator ("SENCO").

## Outcomes of a Refusal to Issue an EHC plan appeal

If you win the appeal, then the LA will be ordered to issue a draft EHC Plan, to consult with you as parents or the young person, and then issue a final EHC Plan. If you are not happy with the EHC Plan, then another appeal against the contents of the EHC Plan will need to be submitted. This would be after the Plan is issued. If you do not win the appeal, then the LA will not have to issue an EHC Plan. But hopefully the school or setting will be able to use the extra information and advice gathered to support your child or young person better in the future.

