



SEN factsheet

My local authority has refused to carry out an EHC needs assessment

Not all children / young people (CYP) with special educational needs (SEN) will require an assessment of their needs. However, there is a clear legal test for when it is appropriate and it is anticipated that local authorities will continue to refuse to assess where an assessment is actually required.

The following is addressed to parents of children and young people but is intended as guidance for anyone involved, including the young person themselves. "Young people" is a phrase the Children and Families Act 2014 has introduced which means a person between 16 – 25 years of age, in education and with mental capacity.

Identification

Anyone who has concerns that a CYP has SEN may report those concerns to the local authority. Local authorities are required to have an understanding of the SEN of all CYP in their area.

A specific request for assessment can be made by:

- The young person.
- The parents.
- The school or college (ideally with the parents or young person's agreement).

After receiving the request for an education, health and care (EHC) assessment, the local authority will have six weeks to decide whether or not to complete the assessment.

Note that only parents or the young person will have a right of appeal of the local authority refuses to conduct the assessment.

Deciding whether to assess

The decision about whether or not to complete an assessment will be based on a legal test. The local authority will only complete the assessment if it is convinced of the following:



- The CYP has or may have SEN.
- It may be necessary for special educational provision to be made for them in accordance with an Education, Health and Care Plan (EHCP).

If the local authority refuses to complete an EHC needs assessment, you will have the right to appeal that decision to the Special Educational Needs and Disability (SEND) Tribunal.

Mediation and Appealing

The Children & Families Act 2014, along with related regulations, have made it a requirement that you should at least consider whether or not to enter into mediation with the local authority about any decision it makes.

Mediation is a process whereby both sides can meet to discuss their positions and try to reach an agreement. There is no judge and no 'decision' can be taken to force either party to agree to anything. For more detailed information, see our "What is mediation?" factsheet.

Even if you do not want to go through with mediation you must make contact with the mediation service who will explain to you the process and purpose of mediation. You have **two months** to contact the mediation service from the date on the decision letter sent by the local authority.

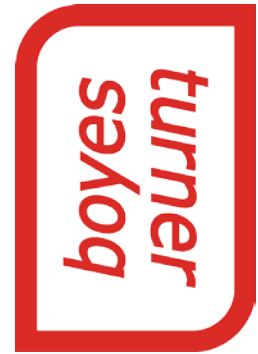
Your decision on whether or not to go to mediation has an impact on when you need to tell the Tribunal that you want to appeal.

- If you **do not** want to go through mediation, you will be issued with a mediation certificate three days after confirming this with the mediation service.

You will then have **one month** to send the appeal form to the Tribunal or **two months** from the date of the LA's decision letter, whichever is the later date.

- If you **do** want to go through mediation, the local authority must ensure that the mediation process is completed within **30 days**. Three days after the completion of the mediation, you will be issued with a mediation certificate.

You will have **one month** after receipt of the mediation certificate to appeal to the Tribunal or **two months** from the date of the LA's decision letter, whichever is the later date.



To appeal, you will need to send a completed appeal form to the Special Educational Needs and Disability Tribunal. The appeal form is available from the website www.justice.gov.uk/forms/hmcts/send.

This is a very short form. You will also need to send to the Tribunal all paperwork evidence and legal arguments to support your case.

Appeals on the refusal to carry out an EHC needs assessment are heard on papers alone. You must specifically request an oral hearing if you want one. It is, therefore, particularly important that your written appeal fully addresses the legal requirements and is supported by sufficient evidence.

As it can often be a difficult and daunting process to set out the legal arguments and to know which experts to approach, it can be helpful to discuss this with a specialist solicitor before sending an appeal to the Tribunal. The appeal form is the basis of the appeal. It is important for the success of the appeal that it is completed correctly and that as much evidence as possible is provided. Trying to change the appeal, evidence or arguments after the appeal form has been sent can be very difficult and can lead to the appeal itself being brought to an early end by the Tribunal.

If you have any questions or require advice, please contact the Special Educational Needs team on [0118 467 6547](tel:01184676547) or senexpertsolicitors@boyesturner.com.

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