

APPEAL AN EHCP DECISION

to the Special
Education Need and
Disability Tribunal

A brief guide for parents/carers and young people.

THE SEND CODE OF PRACTICE SAYS:

Parents and young people can appeal to the Tribunal about:

- a decision by a local authority not to carry out an EHC needs assessment or re-assessment
- a decision by a local authority that it is not necessary to issue an EHC plan following an assessment
- the description of a child or young person's SEN specified in an EHC plan, the special educational provision specified, the school or other institution or type of school or other institution (such as a mainstream school/college) specified in the plan or that no school or other institution is specified
- an amendment to these elements of the EHC plan
- a decision by a local authority not to amend an EHC plan following a review or re-assessment
- a decision by a local authority to cease to maintain an EHC plan

11.45

APPEALING A REFUSAL TO ASSESS

The Local Authority (LA) must inform you within 6 weeks of the EHC needs assessment request whether they are going to conduct the assessment or not.

If the LA refuse to assess, then you will receive a letter from them detailing the reasons why they've said no and your right to appeal the decision.

You have two months from the date on the letter sent from the LA in which to lodge an appeal with SENDIST and you must consider mediation.

Please consult the 'Refusal to assess/issue flowchart' form and 'Suffolk SENDIASS - Help filling in SEND 35a form' video on our website for further information on how to appeal including the details for KIDS mediation and the appeal forms.



LEGAL TEST FOR A REFUSAL TO ASSESS

The legal test is found under the Children and Families Act 2014, which states:

'36 Assessment of education, health and care needs

(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.'

This is the only test that applies and it trumps any LA policies. It is also described as a low bar in law. Although it is the LA's responsibility to prove why that legal test applies, you can't rely solely on this and so it's important that at mediation, or if you take it further to SENDIST, you show them that your child or young person has or may have SEN and may need provision detailed in an EHCP to get the right help at their place of learning.

APPEALING A REFUSAL TO ISSUE

The LA must inform you as soon as is practicable and at the latest within 16 weeks of the date the request for assessment was made if they are going to issue an EHCP.

If the LA refuse to issue, then you will receive a letter from them detailing the reasons why they've said no and your right to appeal the decision.

You have two months from the date on the letter sent from the LA in which to lodge an appeal with SENDIST and you must consider mediation.

Please consult the 'Refusal to assess/issue flowchart' form and 'Suffolk SENDIASS - Help filling in SEND 35 form' video on our website for further information on how to appeal, including the details for KIDS mediation and the appeal forms.



LEGAL TEST FOR A REFUSAL TO ISSUE

The legal test is found in section 37(1) of the Children and Families Act, which states:

“(1) Where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan –

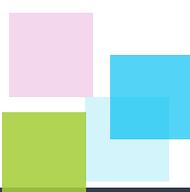
(a) the local authority must secure that an EHC plan is prepared for the child or young person,

and

(b) once an EHC plan has been prepared, it must maintain the plan.”

Based on the evidence gathered as part of the EHC needs assessment, the LA must look and decide whether it is necessary for your child/young person to have an EHCP to provide the special educational provision (SEP) required.

If the LA refuse to issue an EHCP because they believe the SEP can be met without one, then you or the young person will be able to appeal this decision. In this appeal the ‘burden of proof’ is on you as the parent/carer or young person to prove why the EHCP is necessary.



As part of the appeal you will need to show that without an EHCP the child/young person will not receive the special educational provision they require which in turn shows why the EHCP is necessary.

For young people over 18, the LA must also consider whether they require additional time, in comparison to most of their peers who do not have SEND, to complete their education or training - section 36(10) of the Children and Families Act.

IPSEA (Independent Provider of Special Education Advice) have a useful resource called 'Refusal to Issue pack' on their website. This can help you to understand this type of appeal and how to show that the EHCP is necessary to provide your child/young person with the correct special educational provision (SEP).



APPEALING THE CONTENTS OF AN EHCP

There are certain parts of the plan you can appeal to SENDIST, these are B (the needs), F (the provision) and I (the place of learning) – you can appeal any or all these sections.

You can appeal these sections either following a final plan being issued, a decision by the LA not to amend the plan following a review or reassessment or if changes were made to the plan that you don't agree with.

We would advise that if you are looking to appeal section I you also look to appeal sections B and F, as the tribunal will be looking at these two sections to see if the place of learning named is able to meet the needs and provision detailed in those two sections. Use our 'Reading and Understanding' booklet to help you read through the EHCP and ensure that B and F are specific and quantified with no woolly wording.

Alongside B, F and I, you can ask the tribunal to make non-binding recommendations on health and social care. These are called the 'extended appeals'. Unlike decisions made about sections B, F and I which are binding, decisions around health and social care are not binding; although it is made clear that the recommendations should be followed. You can only ask for recommendations on health and social care if you are appealing an educational aspect (B, F and/or I).

You only have two months from the date of the letter sent with the final EHCP or decision letter that states 'maintain' from the LA, or one month from the date on the mediation certificate – whichever is the later – in which to lodge your appeal to the tribunal.

Please consult the 'Recording of Norfolk SENDIASS online Tribunal Training' video and 'Suffolk SENDIASS - Help filling in SEND 35 form' video on our website for further information on how to appeal the contents of an EHCP.

APPEALING A CEASE TO MAINTAIN AN EHCP

When the LA decide to cease (end) an EHCP it means that they no longer have the legal duty to ensure that the provision specified in the plan is provided to the child or young person. There are only certain reasons the LA can cease an EHCP (these are set out in the Children and Families Act 2014 Section 45):

- If the LA is no longer responsible for the child or young person

Or

- If it is no longer necessary to maintain it

The LA would no longer be responsible if:

- The young person has decided to take up paid employment (excluding apprenticeships)
- The young person has started University
- A young person aged 18 or over has left education and no longer wishes to engage in further learning
- The young person has turned 25
- The child or young person has moved to a different LA (the new LA should adopt the EHCP)

In some situations, an EHCP may no longer be necessary. This is normally because the child or young person no longer needs the provision set out in the EHCP as their needs have changed.



THE SEND CODE OF PRACTICE SAYS:

Young people with EHC plans may need longer in education or training in order to achieve their outcomes and make an effective transition into adulthood 9.151.

If the LA decide to cease to maintain the EHCP they must first:

- Consult with the child's parent/carer or young person, as well as the head teacher or principal of the place of learning that is being attended.
- Issue a cease to maintain notice (this is a notice in writing to the parent/carer or young person telling them that the LA wants to cease to maintain the EHC plan and the reasons why).

If a cease to maintain notice is issued, the LA must continue to maintain the EHCP and fund the provision/ placement until either the appeal is finished, or the right of appeal has expired.

You have two months from the date of the cease to maintain notice or one month from the date on the mediation certificate – whichever is the later – in which to lodge your appeal to the tribunal.

Please consult the 'Suffolk SENDIASS - Help filling in SEND 35 form' video on our website for further information on filling in the appeal form.

USEFUL INFORMATION

- If after using this booklet and the related resources you still need information, advice, and support with the appeal you can visit our website 'Norfolk SENDIASS' to book an appointment with an adviser.
- The 'First-tier Tribunal (Special Educational Needs and Disability)' website has all the forms needed in which to appeal as well as their contact details and further guidance to help you understand the appeals process.
- Kids Mediation have a vast amount of information on their website to help you understand what mediation is, how it can help and how to contact them.
- IPSEA (Independent Provider of Special Education Advice) have information and resources on their website that can help with appeals.



Visit our website
to book an
appointment.
If you need this
information in
another format
please contact us.



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