

## **NE Lincs SENDIASS Fact Sheet**

### **Appealing to the SEND Tribunal – Refusal to Assess**

The accurate information provided within this pack is given in line with legislation and statutory guidance.

<https://www.gov.uk/government/publications/form-send35-special-educational-needs-and-disability-tribunal-appeal>

#### **The legal test**

Section 36 (8) of the Children and Families Act 2014 (C&FA 2014) states that the **LA must secure an EHC needs assessment for the child or young person if the child or young person has or *may* have SEN, and, it *may* be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.** For young people over the age of 18, there is an additional requirement. Section 36 (10) C&FA 2014 states that the LA must consider whether the young person requires additional time to complete their education or training compared to the majority of others the same age who do not have SEN.

#### **Reasons for your appeal**

**Establishing the first part of the test - LA must secure an EHC needs assessment for the child or young person if the child or young person has or *may* have SEN**

The word 'may' is important. Think about the reasons why you feel your child 'may' have Special Educational Needs. According to the Children and Family Act 2014 (Section 20): a child or young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her. (2)A child of compulsory school age or a young person has a learning difficulty or disability if he or she— (a) has a significantly greater difficulty in learning than the majority of others of the same age, or (b) has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

(3)A child under compulsory school age has a learning difficulty or disability if he or she is likely to be within subsection (2) when of compulsory school age (or would be likely, if no special educational provision were made

**Establishing the second part of the test - it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan**

Case Law can provide detail to use within your appeal. The following link will direct you: <https://www.ipsea.org.uk/Pages/FAQs/Category/case-law>

**Cambridgeshire County Council v FL-J [2016] UKUT 0225 (AAC):** The test for carrying out an EHC needs assessment is “*provisional and predictive*” – it simply needs to be shown that the child or young person *may* need support at a level which the school or other setting is unable to provide without an EHC plan.

**MC v Somerset County Council (SEN) [2015] UKUT 0461 (AAC):** An EHC needs assessment may be necessary in order to access enforceable rights – for example, where a school could theoretically do more to support a pupil but is unable or unwilling to do so, and so an EHC plan is necessary to access that support.

**Evidence to consider gathering and submitting with your appeal:**

- Reports from professionals which highlight and give a description of Special Educational Needs
- School and/or College reports showing progress and attainment
- Records of exclusions or a diary of any informal exclusions that have occurred
- Attendance records

Any records from school can be gathered by making a subject access request.

If you would like help or want to discuss how we can support you to resolve any problems please call;

NE Lincs SENDIASS on **01472 355365**

or email:

**nelincs@barnardos.org.uk**

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