

## **NE Lincs SENDIASS Fact Sheet**

### **Appealing to the SEND Tribunal – Refusal to issue an EHC Plan**

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 37 (1) of the Children and Families Act 2014 states that** 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.

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

The word 'necessary' is important here.

#### **The SEND Code of Practice highlights the following;**

9.55 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 take into account:

- whether the special educational provision required to meet the child or young person's needs can reasonably 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

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

**CB v Birmingham CC [2018] UKUT 13 (AAC)** There is a 'clear, albeit rough and ready resource line to be crossed before an EHC plan is considered to be necessary. It is based on the kinds of provision a school could make from its own notional SEN budget.'

**Manchester CC v JW [2014] ELR 304** UT confirmed that I may be necessary to issue (or assess) if a school or LA, despite having the necessary resources, simply refused to use their best endeavours to provide the required SEP for a child.

It is important to explain why the Special Educational provision can only be secured through an EHCP. For example:

Are there waiting lists for services? Has the child/young person been given a block of therapy which will come to an end? Have school said they cannot provide what is needed consistently?

### **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.

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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