

Information for Parents and Carers

Appealing the Local Authority Decision Not to Issue an Education, Health & Care (EHC) Plan

The decision letter from the Local Authority will explain your right to mediation and appeal. If you wish to appeal, you have 8 weeks from the date of the decision letter from the LA to lodge your appeal.

Firstly, it is important to fully understand why the local authority reached this decision. It's always a good idea to continue talking to the local authority about your concerns, or any questions you have about the reasons they gave in reaching their decision. Further information will help you decide whether to appeal and should you decide to appeal, will be important in helping you to prepare for the appeal.

Before appealing, you must consider mediation; the Local Authority decision letter will have the details of how to arrange this. It can be really useful, for example, if you have some additional information or a new report you would like to share with the local authority. It can be that after mediation the Local Authority change their position and there is no need to progress to an appeal.

However, if after mediation you decide to pursue an appeal, you must complete the SEND35 appeal form. This needs to be sent to the tribunal service along with a copy of the mediation certificate and the decision letter within 4 weeks of the date on the mediation certificate, or 8 weeks from the date of the decision letter, whichever is the longest (see our appeals process guide for more information).

The following information will help you to understand more about the context of the refusal to issue decision and help you to prepare for appeal.

The Legal Position.

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 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' (9.55)

What Does This Mean?

In reaching their decision the local authority should consider:

- The information gathered during the EHC needs assessment
- The child or young person's SEN
- The Special Educational Provision ready being made

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

- Any further Special Educational Provision is needed
- Whether the required provision could reasonably be provided from within the resources normally available to the education setting
- Whether it is necessary for the local authority to make special educational provision in accordance with an EHC plan

Your appeal needs to explain and evidence reasons why you believe it is necessary for the special educational provision to be set out in an EHC plan.

Key reasons usually fall into these categories:

1. There were gaps in understanding your child's SEN prior to assessment, and the provision may not have been 'well-matched'
2. Progress* is not sufficient despite appropriate provision
3. The required special educational provision cannot be provided without an EHC plan (e.g. the setting cannot be reasonably expected to provide from within their own resources or where you are seeking a specialist setting**)

*Progress is not limited to academic attainment and can be across any of the four broad areas of need (communication and interaction; cognition and learning; social, emotional and mental health difficulties; sensory and/or physical. See 6.28 to 6.34 of the SEND Code of Practice for a full definition).

** Settings can apply for top-up (high needs) funding without an EHC plan. You will need to consider how you can show the needs of your child are over and above what the setting can provide within the available funding.

With point 1 it may be difficult to counter a local authority view that the EHC needs assessment process has identified further provision which can be reasonably provided by the setting.

With points 2 & 3 it will be essential to look at what the local authority expects schools and settings to provide, what is already being put in place, and what progress is being made.

You can find out what is generally available within the Gateshead Local Offer, but if you can't easily find what you need, you can request this from the local authority by letter or email.

Supporting Evidence

Read the school's SEN policy, SEN Information report and accessibility plan (explains adjustments made for disabled pupils and ongoing plans to improve access). If you can't find something you can request information from the school.

Listed below are some examples of supporting evidence. They may not all be relevant to your case.

- Your child/young person's views - this can be a short video
- Your own views
- Progress reports
- Statements from teachers who work with your child
- Medical reports/assessments
- IEP/support plan/pupil passport/provision map
- Home/school diaries

Supporting Evidence (continued)

- Assessment/specialist reports
- Exclusion letters/reports
- Letters/emails from setting/local authority/health/specialist/'continuing care assessment'
- Examples of school or homework (can be helpful where rate of progress is in dispute)
- You can request a copy of your child's school record (you will likely be charged for photocopying)
- Second opinion - where you disagree with a professional report or recommendation, where finances allow you could explore private assessment. Where views of professionals differ each is given equal weight at tribunal.

Consider the Local Authority View

The decision letter from the local authority should explain why they decided not to issue an Education Health and Care plan. They may have suggested changes to provision and you will need to consider your counter-argument here as to why you believe this provision can only be met by having an EHC plan.

Consider the Setting/School View

Where the setting is in support of your case, they are likely to be happy to share with you any supporting evidence, for example, a provision map outlining the required provision and related costs. They may also agree to provide a witness statement in support of your case - see further down information about witnesses.

What if School are Not in Support?

In this circumstance the local authority will be likely to include information from school as evidence for their case, so it is important to understand the arguments you will be up against. Talk to school about why they do not feel an EHC plan is necessary, and how they will be able to make the provision without one. Where they disagree about the rate of progress, use the opportunity to unpick this further.

Remember when we talk about progress this should not be limited to academic attainment; there may be wider needs which are having an impact to your child's learning. Consider whether the provision proposed meets all the needs of your child.

Witnesses

You can ask professionals to be your witness, though first establish whether they will be in support of your appeal. You can ask if they will provide a letter or report which helps you to evidence your key points, which you can include in your appeal. You could ask if they will come along to the hearing, if they decline you can request a summons for them to attend - before you do this be sure they intend to support your case!

Private therapists and psychologists are likely to charge a daily fee to attend a hearing, which will be your responsibility to cover.

If you need to ask any questions or for further advice, please contact:

Barnardo's SENDIASS on southteessendiass@barnardos.org.uk