

Information for Parents and Carers

Appealing a Local Authority Decision Not to Carry Out an Education, Health & Care (EHC) Needs Assessment (or Re-assessment)

The decision letter from the local authority will explain your right to mediation and appeal (you cannot appeal a refusal to assess decision where the local authority has carried out an EHC needs assessment in the previous six months). You have 8 weeks from the date on the decision letter from the local authority (see our appeal process info sheet).

It is always a good idea to continue talking to the local authority about your concerns or any questions that you have. Further information could help you to decide whether to appeal, and if you do decide to then it will help to build your case.

Before appealing you must firstly consider **mediation**, this can prove to be really useful, for example where:

- You have some additional information or a new report you would like to share with the Local Authority
- The local authority have omitted to include information gathered during assessment
- You believe further assessment is necessary (you could request re-assessment, which may avoid you needing to appeal)

It is possible following mediation that the local authority will agree to arrange for further assessment, thereby avoiding the need to appeal. If, after mediation, you decide to pursue an appeal, you must complete the SEND35A 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 the context of the refusal to assess decision and to help you to prepare for the appeal.

The legal position

"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." (36.8)*

Your case needs to satisfy these two conditions (known as the legal tests) in order for a successful outcome. The important thing to note here is the use of the word '**may**' in both these tests - the child 'may' have SEN and 'may' need an EHC plan.

Usually the first of these (a) is not in dispute and the local authority will likely be relying on the second (b) of these legal tests.

You do not need to evidence that your child/young person definitely needs an EHC plan. The purpose of this type of appeal is to establish whether the local authority should carry out an EHC needs assessment.

If you are appealing a 'refusal to re-assess'...

The SEND Code of Practice says:

Local authorities must conduct a re-assessment of a child or young person's EHC plan if a request is made by the child's parent or the young person, or the governing body, proprietor or principal of the educational institution attended by the child or young person, or the CCG (or NHS England where relevant). (9.187)

The local authority can refuse where assessment has taken place within the last six months, or where they have decided that re-assessment is not necessary.

Re-assessment is the same process as for the first EHC needs assessment, including the right of appeal.

Preparing for Appeal.

Think about the reasons an assessment was requested in the first place. Key reasons usually fall into one or more of these categories:

1. There are gaps in knowledge i.e. it is not known what the needs are, and an assessment is the only way to determine these
2. There is little or no progress* despite support from the setting
3. The setting need help from the local authority to provide what is needed**

*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 points 2 & 3 it will be essential to look at what the Local Authority expect 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 (these explain adjustments made for disabled pupils and ongoing plans to improve access).

You will need to clearly evidence educational needs. Though 'health' and 'care' needs are relevant and picked up within the EHC process, it is the educational needs that are the trigger for an assessment.

See below for some examples of supporting evidence...

- 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
- 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 carry out an EHC needs assessment. They may have made other recommendations, for example, a referral to a specialist service. You need to consider your counter-argument here as to why you believe this action will not meet your child's needs.

Have the local authority taken everything into account? You can ask the LA which information was considered in making the refusal to assess decision.

Consider the Setting/School View

Where the setting supported the EHC needs assessment request, they are likely to be happy to share with you any supporting evidence, for example, a provision map outlining the planned support and related costs. They may also agree to provide a statement in support of your case.

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 needs assessment is required, and what their view is for next steps. 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 all your child's needs, what support they have had, for how long, and what impact (if any) the support has had i.e. have the desired outcomes from targeted support been achieved?
- Where the setting are suggesting trying a different strategy/service (and particularly where this was recommended by the local authority), consider how or whether this will have the desired impact for your child. For example, the strategy may have been tried previously or will only support one area of need, whereas a full assessment will give you an overall picture.

'Refusal to Re-assess'

For this appeal you need to show that your child/young person's needs have changed significantly since the EHC assessment was refused. Refer to the above ideas for 'supporting evidence' and think about how you can demonstrate one or more of the following:

- Your child's needs have changed
- That the provision is not working and needs changing
- That you believe your child needs another type of school or setting.

If you need to ask any questions or for further advice, please contact:
Barnardo's SENDIASS on [**southteessendiass@barnardos.org.uk**](mailto:southteessendiass@barnardos.org.uk)