

SEND 37 - How to appeal a SEN decision Guide _____	2
SEND 37 (Easy Read) - How to appeal a SEN decision Guide _____	26
IPSEA - EHC Plan Checklist _____	82
IPSEA - Refusal to Assess Pack _____	94
IPSEA - Refusal to Issue Pack _____	129
IPSEA - Appealing the named school _____	136
SEND Information and Advice Providers - CDC _____	145
Guidelines for Parents Carers looking for support with Tribunal - Council for Disabled Children _____	151
2111 YouTube links _____	152



How to appeal an SEN decision

The aim of the guide is to help you through the appeal process in the First-tier Special Educational Needs and Disability (SEND) Tribunal.

The SEND Tribunal is part of the system of courts and tribunals which makes decisions in appeals and claims.

SEND Tribunal hears cases which involve:

- appeals against decisions of local authorities about children with special educational needs; and
- claims of disability discrimination by a school against a child (please see the “How to make a claim” booklet for more information).

The guide explains what is involved in making an appeal to SEND Tribunal, step by step.

The staff who administer appeals are called ‘tribunal clerks’. They will handle letters, emails and phone calls and deal with any questions. However, they cannot give legal advice.

Using the guide

The guide is quite long, because it provides detailed information on each of the stages in the appeals process. It can be used as a manual, checking each step as the appeal progresses, or as a reference, to look up issues as they arise.

Download the appeal form you need from:

For appeals against a LA decision not to carry out an EHC assessment <https://www.gov.uk/government/publications/form-send35a-special-educational-needs-and-disability-tribunal-appeal-a-refusal-to-secure-an-ehc-needs-assessment>

For appeals against all other LA decisions <https://www.gov.uk/government/publications/form-send35-special-educational-needs-and-disability-tribunal-appeal>

Contact

SEND Tribunal's contact details are:

By phone: 01325 289350

By fax: 0870 739 4017

By email: send@justice.gov.uk

In writing to:

First-tier Tribunal Special Educational Needs and Disability
1st Floor, Darlington Magistrates Court
Parkgate
Darlington DL1 1RU

Section 1 – Making an appeal When can I appeal?

The deadline for making appeals is two months from the date of the letter from the local authority giving their final written decision. You must SEND Tribunal the appeal so that it is received by SEND Tribunal within two months of the date of the letter. If you want to appeal after the two months deadline, if the circumstances are exceptional you can apply to extend the time.

In most cases you will need to consider whether you want to go to mediation before you make your appeal. If you go to mediation or decide that you don't want to go to mediation you will need a mediation certificate issued by a mediation provider before you can make an appeal. You will have two months to request a mediation certificate from the date of the letter from the local authority giving their final decision. The letter must give contact details for a mediation provider. This deadline cannot be extended by the mediation provider. You will then have an additional 30 days from the date of the Mediation certificate to make an appeal to SEND Tribunal.

Even after an appeal has been made, parents or a young person and the LA should continue to try to reach agreement by discussing the case.

What can I appeal?

You can appeal if the local authority:

- refuses to arrange an EHC assessment of the child or young person's special educational needs, following a request by a child's parents, young person or school, college;
- refuses to issue an EHC Plan for the child or young person after completing an EHC assessment;

- refuses to arrange a EHC reassessment of the child or young person (following a request by the child's parent, young person's or school, college) if the local authority has not carried out an EHC assessment in the last six months;
- decides to stop maintaining an EHC plan;
- decides not to amend the EHC plan following an annual review;
- decides not to change the EHC plan after carrying out an EHC reassessment; or
- has finalised, or has changed a previous EHC plan, and you disagree with one or all of the following.
- The Section which specifies the child or young person's special educational needs in Section B of the EHC Plan.
- The Section which specifies special educational provision in Section F of the EHC Plan.
- The school/college/institution or type of school/college/institution named in Section I of the EHC Plan or type of school named in Section I of the EHC Plan.
- The local authority not naming a school/college/institution in Section I of the EHC Plan.

Are there any issues SEND Tribunal cannot decide?

SEND Tribunal cannot deal with a case if the issue is:

- the way the local authority carried out the EHC assessment, or the length of time that it took;
- how the local authority or the school or college is arranging to provide the help set out in the EHC plan;
- the way the school or college is meeting your child's or a young person's needs under SEN Support;
- the outcomes in Section E of the EHC plan
- any disputes about the wording of Sections A, J, K of the EHC plan

In terms of the last bullet point, you would first need to ask your local authority to amend the EHC plan at annual review or if that is not for some time, ask the local authority to arrange an interim review of the EHC plan.

- Admissions appeals
- Exclusion appeals unless it involves an allegation of disability discrimination

Recommendations concerning Health or Social Care

From 3 April 2018 the Tribunal will be able to also consider issues concerning a child or young person's health or social care needs in certain circumstances including Sections C, D, G and H of an EHC Plan. This will only be where an appeal concerning educational issues is being made to the Tribunal. Please see separate Guidance on asking for a Recommendation to be made by the Tribunal https://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?original_id=2063

Who deals with the issues SEND Tribunal cannot determine?

You should discuss your concerns with the school, college or the local authority. If you are still not happy, you can complain to the Secretary of State for Education. If they agree with your complaint, they may ask the school, college or the local authority to take action to put things right. You can contact the DfE at Email: SEN.IMPLEMENTATION@education.gov.uk

You may also be able to complain to the Local Government Ombudsman. You can get guidance on this by contacting the LGO Advice Team on 0845 602 1938 or by writing to:

Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH

You can also visit their website: www.lgo.org.uk

Should I appeal?

The guide deals with how to appeal. It cannot advise on the strength of your case. Tribunal clerks can help with phone queries about the appeal as it goes through the process, but cannot give an opinion about whether the appeal is likely to win or lose, or whether or not a particular step should be taken.

Can I get advice about whether I can appeal?

The local authority should have told you about the following groups that may be able to give you advice.

- A local Information, Advice and Support Service (IASS)
- A voluntary organisation which helps people with special needs
- A parents' or young person's support group
- National Advice Organisations

The local authority should also have told you about its named officer who can work with

you to try and sort out the issues in the appeal.

Can I get help if I decide to make an appeal?

The groups above and the local authority officer may be able to put you in touch with an independent supporter or a representative.

You may be entitled to public funding (Legal Aid) in preparing your appeal. A solicitor will be able to advise you on whether you are entitled to this. The Law Society or your local Citizens Advice (CA) will be able to give you the names of organisations who offer public funding and are experienced in education matters. Public funding for a lawyer to represent you at the hearing is only available if the circumstances are exceptional.

What is likely to be involved?

SEND Tribunal's service is free. Unlike going to court, there are no fees involved. A contribution can be made towards any out-of-pocket expenses you incur from attending the tribunal hearing, such as travel costs.

From start to finish, the process of making an appeal can take up to five months depending on the type of case. Usually, there will only be one hearing where you need to visit the tribunal. Hearings normally start at either 10am or 2pm. Occasionally, in a complicated case, it may need to be adjourned to another day for SEND Tribunal to hear all the necessary evidence.

Preparing the appeal may involve you in gathering evidence to support your case.

Section 2 – Starting an appeal

Are there time limits for making the appeal?

SEND Tribunal must receive the appeal within two months of the date on the letter from the local authority giving you their final decision.

If you miss the deadline, a Tribunal Judge may extend the time for making the appeal but you must ask for the extension by:

- sending SEND Tribunal your completed appeal form as soon as possible; and
- explaining why the appeal is late giving full reasons for the delay and
- explaining why you consider the appeal will be successful and should go ahead even if late;
- explaining why the local authority will not be prejudiced by the late appeal;
- explaining why you should not have to wait for an annual review or ask for another assessment;
- drawing attention to any other matters that you think are relevant.

The Tribunal Judge may allow an extension if there are special circumstances which prevented the appeal being made in time and it is fair and just to do so.

If the Tribunal Judge allows the extension, the appeal will go ahead. If the judge refuses an extension, the appeal will go no further.

There is a right of appeal to the Upper Tribunal against a decision not to extend time, but it can only be made with permission on the ground of an error of law.

What are the grounds of appeal?

You must identify the decision appealed and give the date of the local authority letter giving you the decision.

You must give the reasons for the appeal including the issues that you want the Tribunal to decide. These are the 'grounds of appeal'. The reasons don't have to be lengthy or written in legal language, but need to say more than just, 'I disagree'. Explain why you disagree with the decision and what you would like SEND Tribunal to do.

If you have information or evidence supporting the appeal, enclose it with the appeal.

The appeal form

What does SEND Tribunal need on the appeal form?

Section 1 Your child – asks for details of the child.

Section 2 What are you appealing against – this is important because this is where you explain why you are appealing.

Section 3 Your appeal – asks for information about the Local Authority decision

Section 4 Your contact details – asks for your details and the contact details of any representative that you may have

Section 5 Special Requirements – asks if you have any special needs in terms of the appeal documentation and the hearing.

Section 6 Claims about disability discrimination – asks whether you have an existing disability discrimination claim or if you would like further information about how to make a claim.

Section 7 Checklist. Go through the list and tick the boxes to make sure that you have provided all the necessary information.

Section 8 Signatures – all parties to the appeal must sign the appeal form. Without signatures, SEND Tribunal cannot accept the appeal.

Section 9 Sending the appeal – explains where to send the completed appeal form.

What if I don't send all the right information or documents?

The tribunal clerks may have to contact you about getting the information or documents to SEND Tribunal. If SEND Tribunal does not have the right papers to register the appeal, the appeal form and supporting papers will be returned to you with a list of what else SEND Tribunal requires. The letter from SEND Tribunal will give you 10 working days to send them. If they are received within that time, it will not be necessary to ask for an extension. If they arrive any later than the date you were given, it will be necessary to apply for an extension of time, explain why they are late and why you believe your appeal will succeed.

In some cases an appeal can be registered even if SEND Tribunal does not have all the documents. If that happens, SEND Tribunal will ask you to provide the missing documents within 10 working days. If they are not received within that time, the appeal may be struck out. The appeal will then be at an end.

Do I have to send original documents?

No. Only send photocopied documents and keep the original documents yourself.

Please ensure that all documents which you provide to SEND Tribunal are single sided.

Do I have to send the appeal myself?

No, but you must sign the appeal form yourself, unless your legal representative signs it for you. If the appeal is made jointly with another person, both of you must sign the form. Please be aware that SEND Tribunal will only provide information about the appeal to one person named on the appeal form. The choice is yours (see the form). If none of the boxes are ticked, the information will be sent to the first named person.

If you have a representative and you want them to receive all the letters and papers for the appeal on your behalf, you should give their name and address on the form. A legally qualified representative may sign the form on your behalf if you have given them permission to do so. If you say on the form that your representative is going to receive all the papers, you will not receive any correspondence in connection with the appeal before the hearing. Instead, SEND Tribunal will send it all to the representative. You must let SEND Tribunal know in writing if you decide to stop using your representative or if the details of your representative change.

What if I have any other needs?

Please make sure that you give details of any special needs on the appeal form.

For example, if you need a signer or an interpreter at the hearing, or any special arrangements to be made to enable you to attend the hearing.

Section 3 – The process up to the tribunal hearing

What happens after I send you my appeal?

The appeal will be registered within 10 working days of receipt. SEND Tribunal will tell you that the appeal has been registered and the date of the final hearing of the appeal. The appeal number should be used whenever you contact SEND Tribunal about your appeal.

When the appeal is registered, case directions, an attendance form and a case management questionnaire are issued. The directions will set dates by which you must take action and send the local authority and SEND Tribunal information which will be considered at the hearing. It will also set a date by which you need to tell the local authority and SEND Tribunal about the witnesses (if any) that you will bring and anyone else you want to come to the hearing.

When the appeal has been registered, a copy is sent to the local authority, who are also issued with directions setting out the time limits for sending documents, sending the attendance form and case management questionnaire.

What will the local authority do about my appeal?

The local authority must respond within 30 working days of a copy of the appeal notice being sent. They will send a copy of their response and any accompanying documents to you and to SEND Tribunal. If you do not receive the response within eight weeks of your appeal being registered, you should notify SEND Tribunal in writing.

The local authority will have the same timetable to send further information and evidence as is set out in your directions. The response must say whether or not they oppose the appeal and, if they do, they need to explain why. They should provide a summary of the facts and tell SEND Tribunal what the child thinks about the issues in the appeal. Local authorities are required by SEND Tribunal to provide children's views on the issues in the appeal wherever possible, or an explanation why they have not been provided. They may also contact you about the appeal, as they may have looked at the evidence again and feel that they can provide some or all of what you want.

The local authority may also apply to strike out (bring to an end) your appeal if they believe it is a case that the Tribunal cannot consider. If that happens, the Tribunal will send you a copy of the local authority's application and ask for your written comments, giving you the opportunity to explain why you think your appeal should continue.

What happens if the local authority does not oppose the appeal?

This will depend on the issues in your appeal. If the local authority agrees to change the contents of the EHC Plan and you are satisfied with the outcome, you can withdraw the appeal or ask the Tribunal to order the local authority to change the EHC Plan in the way you have agreed by making a consent order.

If the appeal is about a decision not to carry out an EHC Needs Assessment or re-assessment, not to issue an EHC Plan, not to change the school named in an EHC Plan that is over one year old or to no longer maintain an EHC Plan, and the local authority does not oppose it, the appeal will automatically come to an end. The local authority will have to do what they have agreed to do within a fixed time limit.

What if the local authority does not provide a response?

If the local authority does not send a response by the end of the time in which they have to reply, SEND Tribunal can do a number of things, including barring them from taking further part in the appeal. Before deciding what to do, SEND Tribunal will write to the local authority asking for an explanation for their failure to respond, or failure to respond in time. A tribunal judge will consider any reply the local authority gives and will decide what should happen. If the local authority is barred from further involvement, SEND Tribunal will decide whether your case can be dealt with on the papers or whether there should be a hearing, which the local authority would not attend.

Before the hearing

Can I send in any more documents?

You should try to send in all your documents with the appeal. The case directions will set out if and when you can send other documents. You must send copies of all documents to the local authority at the same time as you send them to the Tribunal.

You should NOT copy SEND Tribunal into every email and correspondence exchange that you have with the other party. Think carefully about the information and documents that you want included in the tribunal bundle and bear in mind that anything you send will be provided to the tribunal panel.

Can I bring new evidence to the hearing?

As a general rule all the documents must be produced before the hearing. You should not normally bring new evidence to the hearing. In exceptional circumstances, SEND Tribunal will consider late evidence on the day of the hearing if you have already provided a copy to the local authority and can provide a good reason for the delay.

Evidence provided to SEND Tribunal after the final evidence date will be returned to you. If you want to bring additional evidence on the day, you should bring 5 copies for the tribunal panel and other party.

What if the local authority has more evidence?

The same rule applies to the local authority.

What if I find it difficult to get hold of a document that is important to my case?

SEND Tribunal has power to order the production of a document. If you apply well before the hearing using the request for changes form, an order may be made directing the local authority or anyone else who may have relevant information to release it. If the local authority objects to releasing the information a judge will consider the objections and then decide whether or not to order the local authority to release the document. You will be able to comment on the local authority's objections before a decision is made. You may also be able to ask someone who is not directly involved in the appeal to release a document they have. That organisation could be the NHS or social care.

Requests for changes

You can ask the tribunal to make an order for documents to be provided or for other directions, if you are unable to agree them with the other party at any time before the hearing. If you want to ask the tribunal to make an order, you should complete the "Request for changes" form explaining what you are asking the tribunal to do, and explaining why you want it done, and send a copy to the local authority and to the Tribunal. The request will be considered by a Registrar or Tribunal Judge and an order will be issued and sent to you and the local authority. You can get a form by phoning the tribunal clerks or by visiting our website, at www.justice.gov.uk.

Can I change my appeal?

Once the appeal has been registered, SEND Tribunal must agree to any changes to the grounds of appeal. A request must be made in writing on the "Request for changes" form. On the form, set out the changes you want to make and explain the reasons for asking for the amendments and send a copy of the form to the local authority and to the Tribunal.

What is a telephone case management hearing?

Sometimes, if there is an issue that a party has raised that is not easily resolved on the papers, a Registrar or Tribunal Judge will direct for a telephone case management hearing to be arranged.

This is a hearing that takes place by means of a conference call where the Tribunal Judge, the local authority representative and you or your representative (or both of you) will be able to discuss the case over the phone. You will be provided with a telephone number and an explanation of what you should do to join the hearing. Telephone hearings usually last between 20 and 30 minutes, and the Tribunal Judge will either give you a decision immediately or reserve the decision. In all telephone hearings, the orders made will be confirmed in writing within a few days.

Can I withdraw my appeal?

The appeal can be withdrawn with SEND Tribunal's agreement. If you inform SEND Tribunal that you want to withdraw, permission will usually be given if it is more than three weeks before the hearing. The application to withdraw must be made on the request for changes form and explain why you wish to withdraw.

If you want to withdraw less than 15 working days before the hearing, you need to make the application in writing on the request for changes form setting out the reasons why you are withdrawing so close to the hearing. A tribunal judge will consider the request and decide what further action, if any, is required. You may need to take part in a telephone conference to explain why you want to withdraw.

A request to withdraw the appeal very near to the date of the hearing may be refused and both parties required to attend before a judge to explain the reasons for the late settlement of the appeal.

What will happen to my appeal if I move to live in another local authority area?

You must inform SEND Tribunal immediately if you move house. If you move to another area, SEND Tribunal will then contact the new local authority to tell them about the appeal. The new local authority may be substituted as a party to the appeal as if they had made the decision. Your appeal will be against them, unless there are good reasons why they should not take over the appeal. If the case is transferred to the new local authority, there will be a new timetable for supplying evidence. The old local authority will take no further part in the appeal.

What is a working document?

A working document is a copy of the final EHC Plan, on which both parties have worked to show the changes to the wording that they want or can agree, as well as those issues which the Tribunal must decide on the day of the final hearing.

The working document is provided to SEND Tribunal in advance of the hearing so that the tribunal panel is aware of the detailed wording in dispute. Sometimes, the options preferred by the two parties are brief and immediately clear to the reader. On other occasions the issues are more complex and/or lengthy and the working document may be confusing unless the document is carefully drafted.

How will I know the place for the hearing?

At least 10 working days before the hearing, you will receive a full copy of the appeal bundle and details of the time and hearing venue. Sometimes your hearing may be postponed at short notice due to a lack of tribunal time, but you will be notified of this at least 48 hours before the scheduled start of the hearing.

Sometimes, it is necessary to change the venue for the hearing at short-notice. We will do our best to notify you of any change of venue at least 48 hours before the hearing.

What is Active Case Management?

About three weeks before the final hearing, you and the local authority may get separate telephone calls from a Registrar asking you about any issues arising from your completed case management questionnaire. The call will be quite informal, and will ask you about your witnesses, working document or any other matter noted from your case management questionnaire or the fact that you have not submitted it. The purpose of the call is to make sure that the appeal is ready for hearing and is likely to be effective on the day.

Section 4 - The hearing

A film explaining what happens at a hearing is available on YouTube (type 'special educational needs tribunal hearing' in the search box). A DVD is available to give you some idea of what happens at a hearing. You can ask SEND Tribunal for a copy of the DVD.

Where will my hearing be held?

Appeal hearings are held at Tribunals buildings and in family court rooms as close as possible to your home. SEND Tribunal aims to limit travel to no more than one-and-a half hours in each direction.

What time will my hearing start and how long will it last?

Hearings are fixed to start usually at 10am but some start at 2pm. Please arrive 30 minutes before the hearing time so that you can meet the tribunal clerk, familiarise yourself with the arrangements and ask any questions. The length of your hearing will depend on the issues in the appeal and the number of witnesses coming to the hearing. Sometimes where the appeal is very complex, it may be necessary to adjourn the case to another day so that the tribunal panel can hear all the relevant evidence.

Who will hear my appeal?

The appeal will be heard by a tribunal panel consisting of: a legally qualified tribunal judge, who will be the chair, and depending on the type of appeal, up to two specialist members who have been appointed because of their knowledge and experience of children with special educational needs and/or disabilities.

Do I have to come to the hearing?

You do not have to come to the hearing but it is helpful if you do. The panel will want to hear anything you have to say and you may want to ask questions of the local authority and any witnesses they may bring. If you do not come, the questions may not be asked on your behalf.

The appeal can, however, be considered on the papers if both parties agree. If you consider that your appeal is suitable for a paper hearing, where neither of the parties attend, then you

can tick the box on the notice of appeal form and if both parties consent to a paper hearing, the appeal will be placed for consideration by the first available panel after the final evidence date and your appeal may be decided sooner than if it goes to an oral hearing.

Can I have a representative at the hearing?

You can have a representative at the hearing whether or not you attend yourself. If you are represented, you must let us know on the attendance form sent to you on registration of the appeal.

A solicitor or a barrister may represent you but public funding (or Legal Aid) is not available unless the circumstances are exceptional.

Can both parents come to the hearing?

Yes, anyone who is a parent of the child, even if they have not appealed, may come to the hearing. Where a parent who is separated from the other makes an appeal, they should notify the other parent of the appeal.

If, for some reason, you do not want the other parent to come to the hearing, you must tell SEND Tribunal why not by completing a request for changes form, explaining the reasons for the objection. A tribunal judge may agree to limit that person's involvement in the case.

Can the child come to the hearing?

Yes, the child can come to the hearing and can give evidence, if they want to. However, bear in mind that it is unlikely that the child will stay for the full hearing and you must arrange for someone to look after the child when they are not in the hearing. The tribunal clerk will not be able to look after your child and it is unlikely that there will be a child-friendly place for them and their carer to use in the building.

Can I bring anyone else to support me during my hearing?

Yes, you can bring another person with you for support but they will not be able to take part in the hearing, and the attendance form must show who they will be. If you think that you want more than one supporter, you must make a request on the request form. SEND Tribunal has power to exclude any person from the hearing. As it is a private hearing, no-one other than supporters can attend. If your representative is training someone on the tribunal process, they may be allowed to come as long as they make a request in writing at least 10 working days before the hearing. They will not be allowed to take part in the hearing.

At the start of the hearing, the tribunal judge who chairs the hearing will explain to the parties the procedure to be followed during the course of the hearing.

Can the appeal be heard earlier than the date set?

If you and the local authority agree, then the appeal could be listed for an earlier hearing, if you contact SEND Tribunal to confirm the position. If you know that all of your evidence is available as soon as the local authority's response is received, and your witnesses are available at short notice, then you can, if the local authority agrees, ask for the appeal to be heard at 10 working days' notice.

Witnesses

Do I need to say if I am bringing witnesses?

Yes, you must inform SEND Tribunal on the attendance form who you will be bringing with you. If the information is not provided, SEND Tribunal may prevent your witness from taking part in the hearing or even being in the room where the hearing is held.

IF YOU DO NOT COMPLETE THE ATTENDANCE FORM IDENTIFYING WHO WILL ATTEND THE HEARING YOUR APPEAL MAY BE STRUCK OUT.

If you change your witnesses, you should tell SEND Tribunal and the local authority immediately.

You do not have to bring any witnesses at all but if you do want to, you are normally allowed to bring no more than three to the hearing. This is because SEND Tribunal aims to conclude every hearing within a day and that the focus is on only the relevant issues. Often a report by a professional who has assessed your child will contain all the information you want us to consider and it may not be necessary for that person to come to the hearing as well.

If you want to bring more than three witnesses, you will need to ask permission in writing on the request form. SEND Tribunal has power to limit the number of witnesses.

What if a witness refuses to come to the hearing?

If you have asked someone and they are unhappy about coming to the hearing and have refused to attend, you can ask SEND Tribunal to issue a witness summons to require them to attend. You should complete a request for changes form, explaining why you feel it is important they be there, why their evidence cannot be provided in written format without their having to attend. You will need to explain why they cannot give their evidence through a witness EHC Plan or report, and why it is necessary for them to attend. SEND Tribunal must receive your request at least 15 working days before the hearing.

If the tribunal judge agrees to the request, a witness summons will be issued for you to give to the person. That person will then have to come to the hearing unless there are very good reasons why they cannot.

Will I be able to ask my own questions?

Yes, you will have the chance to ask questions of the local authority, their witnesses and also add anything you feel is important but has not been mentioned.

What will happen at the hearing?

SEND Tribunal hearings are a legal process, but try to be as informal as circumstances allow. When you are shown into the hearing room, you will sit at a table facing the tribunal panel. At the start of the hearing, the Tribunal Judge will give an introduction, explain the procedures to be followed during the course of the hearing and a list of the issues to be considered during the hearing. The parties will be asked to introduce themselves.

The tribunal panel will consider the appeal on an issue by issue basis and you will be invited to give your view and your evidence about each issue in turn. If you have additional issues that you want to raise, which are relevant to the appeal and which haven't already been discussed, you will be given an opportunity to raise these before the end of the hearing.

When all of the issues have been covered, you may be invited by the Tribunal Judge to make some brief closing comments summarising your appeal. You do not have to do this if you consider that all of the relevant issues have been discussed and if you choose to do so, you should keep your comments brief. It is intended to be a chance to summarise your position at the end of the hearing, in light of any changes brought about by the evidence heard.

What expenses can I claim?

You and your witnesses can claim travel expenses to attend the hearing. If you bring a friend or a relative to look after your child, you will be able to claim their travel expenses as well.

You should use public transport where possible (bus, tram, standard-class rail travel). If you travel by car, you can claim a fixed amount for mileage. SEND Tribunal will only pay for taxi fares if public transport is not available, or if you have particular needs (you must tell SEND Tribunal about these before making your claim for expenses). If you require use of a taxi, please contact SEND Tribunal on 01325 392760 or sendistquiries@hmcts.gsi.gov.uk to get authorisation.

Your witnesses can also claim a fixed amount for loss of earnings.

Details about claiming expenses will be included with the notification of the arrangements for your hearing. At the hearing, the clerk will give you the relevant forms to fill in and return. SEND Tribunal will then either post the expenses or put them straight into your account.

Section 5 - After the hearing

How do I get the decision?

You should receive the decision and reasons by post within 10 working days of the hearing. The decision is sent to the nominated contact and the local authority.

How soon will the decision be put into practice?

Once SEND Tribunal's decision is issued, the local authority must carry out the order within a fixed period, beginning with that date.

- To start the assessment or reassessment process – four weeks
- To make a EHC Plan – five weeks
- To amend EHC Plan – five weeks
- To amend the school/college/institution – two weeks
- To continue an EHC Plan – immediately
- To cease (no longer maintain) an EHC Plan – immediately

Some of these timescales also apply when the local authority tells SEND Tribunal they do not oppose the appeal. If the local authority does not keep to the order within that time, you may have to apply to the Secretary of State for Education or the High Court to enforce it. You can also make a complaint to the Local Government Ombudsman by contacting the LGO Advice Team on 0845 602 1938 or by writing to:

Local Government Ombudsman

PO Box 4771

Coventry CV4 0EH

You can also visit their website: www.lgo.org.uk

What can I do if I am not happy about the decision?

When the decision is issued, it will include a leaflet setting out in detail your right of appeal. The following is a brief outline of your options.

When you have received a decision, you may think that the decision is wrong in law or that there is another reason why SEND Tribunal should look again at the decision. If you think it is wrong in law, you can appeal to the Administrative Appeals Chamber of the Upper Tribunal but you must first ask for permission to appeal.

Guidance explaining how to make an application for permission to appeal against the decision and other applications that you can make following the decision is included with the decision.

Who can make an application?

You can make an application if you have been involved in an appeal or claim before the First-tier Tribunal in a special educational needs or disability discrimination case. This includes if you are a parent, or person with parental responsibility, a local authority or a responsible body for a school.

What applications can I make?

Following a decision of the First-tier Tribunal, you can make the following applications.

- You can apply for permission to appeal if you think that the decision was wrong in law.
- You can ask SEND Tribunal to review the decision because there has been a change of relevant circumstances since the decision was made.
- You can ask for the decision to be set aside in certain circumstances.

The three applications are explained in detail in the guidance sent with your decision.

When can I make an application?

You must make an application so that it is received by SEND Tribunal no more than 28 calendar days from the date on the letter sent with the decision.

If you are applying more than 28 calendar days after the decision is sent, you will need to apply for an extension, giving the reasons why the application is late. If a tribunal judge does not agree to extend the time, your application will not be considered.

List of useful addresses

<p>ACE Education 36 Nicholay Road London N19 3EZ Phone: 020 8407 5142 Website: www.ace-ed.org.uk</p>	<p>AFASIC 20 Bowling Green Lane London EC1R 0BD Phone: 0845 355 5577 Website: www.afasic.org.uk</p>
<p>British Deaf Association 18 Leather Lane London EC1N 7SU Phone: 020 7843 6000 Website: www.bda.org.uk</p>	<p>British Dyslexia Association Unit 8, Bracknell Beeches Old Bracknell Lane Bracknell, RG12 7RW Phone: 0845 251 9002 Website: bdadyslexia.org.uk</p>
<p>Coram Children's Legal Centre University of Essex Wivenhoe Park Colchester CO4 3SQ Phone: 08088 020 008 Website: www.childrenslegalcentre.com</p>	<p>Council for Disabled Children National Childrens Bureau 9 Wakley Street London EC1V 1JN Phone: 020 7843 6000 Website: www.ncb.org.uk</p>
<p>Council on Tribunals 81 Chancery Lane London, WC2A 1BQ Phone: 020 7855 5200 Website: www.council-on-tribunals.gov.uk</p>	<p>Department for Education Sanctuary Buildings Great Smith Street London SW1P 3BT Phone: 0370 000 2288 Website: www.education.gov.uk</p>
<p>DIAL UK 39-45 Cavell Street London E1 2BP Phone: 020 7791 9000 Website: www.dlf.org.uk</p>	<p>Equality & Human Rights Commission Fleetbank House 2-6 Salisbury Square London EC4Y 8JX Phone: 0800 800 0082 Website: www.equalityhumanrights.com</p>

<p>Down's Syndrome Association Langdon Down Centre 2a Langdon Park Teddington Middlesex TW11 9PS Phone: 0333 1212 300 Website: www.down-syndrome.org.uk</p>	<p>Haemophilia Society 1st Floor, Petershaw House 57a Hatton Gardens London EC1N 8JG Phone: 0800 018 6068 Website: www.haemophilia.org.uk</p>
<p>Helen Arkell Dyslexia Centre Arkell Lane Frensham Farnham Surrey GU10 3BW Phone: 01252 792 400 Website: www.arkellcentre.org.uk</p>	<p>I CAN 8 Wakely Street London EC1V 7QE Phone: 020 7843 Website: www.ican.org.uk</p>
<p>IPSEA 24-26 Gold Street Saffron Walden CB10 1EJ Phone: 0845 602 9579 Website: www.ipsea.org.uk</p>	<p>KIDS 49 Mecklenburgh Square London WC1N 2NY Phone: 020 7520 0405 Website: www.kids.org.uk</p>
<p>Mencap 123 Golden Lane London EC1Y 0RT Phone: 0808 808 1111 Website: www.mencap.org.uk</p>	<p>MIND 15-19 Broadway Stratford London E15 4BQ Phone: 0300 123 3393 Website: www.mind.org.uk</p>
<p>National Autistic Society 393 City Road London EC1V 1NG Phone: 0808 800 4104 Website: www.nas.org.uk National Blind</p>	<p>Children's Society Bradbury House Market Street Highbridge Somerset TA9 3BW Phone: 01278 765 765 Website: www.nbcs.org.uk</p>

<p>National Deaf Children's Society</p> <p>15 Dufferin Street</p> <p>London EC1Y 8UR</p> <p>Phone: 0808 800 8880</p> <p>Website: www.ndcs.org.uk</p>	<p>National Parent Partnership</p> <p>8 Wakley Street</p> <p>London EC1V 7QE</p> <p>Phone: 020 7843 6058</p> <p>Website: www.parentpartnership.org.uk</p>
<p>National Sensory Integration Partnership (NatSIP)</p> <p>Website: www.natsip.org.uk</p>	<p>National Society for Epilepsy</p> <p>Chesham Lane</p> <p>Chalfont St Peter</p> <p>Buckinghamshire SL9 0RJ</p> <p>Phone: 01494 601300</p> <p>Website: www.epilepsysociety.org.uk</p>
<p>Network 81</p> <p>10 Boleyn Way</p> <p>West Clacton</p> <p>Essex CO15 2NJ</p> <p>Phone: 0845 077 4055</p> <p>Website: www.network81.co.uk</p>	<p>Parents for Inclusion</p> <p>336 Brixton Road</p> <p>London SW9 7AA</p> <p>Phone: 0800 652 3145</p> <p>Website: www.parentsforinclusion.org</p>
<p>Royal Association for Disability and Rehabilitation (RADAR)</p> <p>12 City Forum</p> <p>250 City Road</p> <p>London EC1Y 8AF</p> <p>Phone: 020 7250 3222</p> <p>Website: www.radar.org.uk</p>	<p>Royal National Institute for the Blind</p> <p>105 Judd Street</p> <p>London WC1H 9NE</p> <p>Phone: 0303 123 9999</p> <p>Website: www.rnib.org.uk</p>
<p>Scope</p> <p>6 Market Place</p> <p>London N7 9PW</p> <p>Phone: 0808 800 3333</p> <p>Website: www.scope.org.uk</p>	<p>Sense</p> <p>101 Pentonville Road</p> <p>London, N1 9LG</p> <p>Phone: 0845 127 0060</p> <p>Website: www.sense.org.uk</p>

Glossary of terms for SEN Guidance Booklet

Annual review: the review of the contents of an EHC Plan which the LA must make within 12 months of completing the EHC Plan or as the case may be of the previous review.

Academy: is a type of school that is independent of Local Authority control but is publicly funded, with some private sponsorship. Free Schools, University Technical Colleges and Studio Schools are all types of Academy.

Alternative Provision [AP]: education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; education arranged by schools for pupils on a fixed period exclusion; and pupils being directed by schools to off-site provision to improve their behaviour.

Bundle: all of the documents submitted in the appeal will be issued back to the parties and the tribunal panel in one bundle marked into sections to identify the parents' evidence the LA's evidence, requests, directions and orders and any late evidence submitted in the appeal. The bundle is numbered so that everyone at the hearing will have the same set of documents and references.

Carer: the Code of Practice makes references to a carer as the person who is named by a local authority to care for a child for whom the social services department has parental responsibility ie a child who is the subject of a care order or who has been placed in a residential or foster placement. The carer may qualify as a parent for purposes of the Education Acts because they have care of the child (see definition of parent) if so they will have a role to play in the consideration of a child's special educational needs.

Case management: is a process where specific cases are looked at by a tribunal judge on the papers supplied by the parents and the Local Authority. After this process an order may be issued asking either the parent or the Local Authority to send in further information.

Clerk: A clerk is one of the administration members of staff within the tribunal service. A clerk is not legally qualified and is only able to deal with general queries.

Code of Practice: The Code of Practice for Special Educational Needs is not statutory in content but is guidance that is approved by parliament and was last revised in 2001. The LA must have regard to the Code in making all of its decisions, as must the Tribunal when considering an appeal.

Decision: Final document which is produced by the tribunal judge and members following the final hearing. This document will set out the final decision and sets out what the Local Authority are to do.

Directions: An order by a tribunal judge/registrar which parents and the Local Authority must comply with. It sets out further deadlines for specific information from either party of the appeal.

Independent School: a school that is not maintained by a local authority and is registered under section 464 of the Education Act 1996. Section 347 of the Education Act 1996 sets out the conditions under which an independent school may be approved by the Secretary of State as being suitable for the admission of children with EHC Plan of special educational needs.

Individual Education Plan[IEP]: the IEP is a planning, teaching and reviewing tool. It is a working document for all teaching staff recording key short-term targets and strategies for an individual pupil that are different from or additional to those in place for the rest of the group or class.

Learning Support Assistant [LSA]: a term for describing an assistant providing in school support for pupils with special educational needs and/or disabilities. An LSA can be dedicated support for one pupils or pupils providing close support to the individual pupil and assistance to those responsible for teaching him/her. Some assistants specialising in SEN may also be known by titles other than LSA as decided locally. Some LAs distinguish between LSAs and TAs Teaching assistants. Those with additional qualifications and paid at a higher grade are designated HLTAs Higher Level Teaching Assistants.

Local authority: the local government body responsible for identifying and assessing the child's needs. This will usually be the local authority for the area in which the child lives, but may be another authority if the child is in care or foster care. The relevant authority can change if the child's home changes to another local authority area.

Maintained School: any community foundation voluntary or community special or foundation special schools are maintained by the local authority.

Non-maintained special school: Schools in England approved by the Secretary of State under section 342 of the Education Act 1996 as special schools which are not maintained by the local authority but charge fees on a non-profit making basis. Most non-maintained special schools are run by major charities or charitable trusts.

Occupational therapy: the use of purposeful activity and play to help a child attain maximum levels of functional performance thus gaining self-esteem and independence. Motor, sensory, perceptual, social, emotional and self-care skills are assessed. Working with the child, parents and teachers, occupational therapists use therapeutic techniques (advising on equipment and environment adaptations where appropriate) to improve a child's ability to access the physical and learning curriculum.

OfSTED: Office for Standards in Education: a non-ministerial government department established under the Education (Schools) Act 1992 to take responsibility for the inspection of all schools in England. Her Majesty's Inspectors (HMI) forms their professional arm.

Independent Advice and Support Services (IASS): Funded by local authorities, the remit of IASS can vary widely depending on local arrangements. Their role is to provide neutral and factual support on all aspects of the SEN framework to help parents play an active and informed role in their child's education. They also provide support to Young People. Although funded by the local authority they provide a service to parents and Young People and are often either run at arms length from the LA or by a voluntary organisation to ensure parents have confidence in them.

Permanent venue/venue: This is the venue which you will be attending for your final hearing. Permanent venue means that it is one of our venues which we hold hearings at on a weekly basis.

Phase/Secondary transfer: This is when your child is due to move from a primary school to secondary school.

Physiotherapy: the use of physical approaches in the promotion, maintenance and restoration of an individual's physical psychological and social well being.

Pupil Referral Unit [PRU]: any school established and maintained by a local authority under section 19(2) of the Education Act 1996 which is specially organised to provide education for pupils who would not otherwise receive suitable education because of illness exclusion or any other reason. Further details are given in DfEE Circular 11/99 Chapter 6.

Requests: an application to ask for something which you require or wish to change.

SEN Co-ordinator [SENCo]: A SENCO is responsible for the day-to-day operation of the school's SEN policy. All mainstream schools must appoint a teacher to be their SENCO.

Special educational needs: the child's difficulties which prevent them from learning.

Special educational provision: the educational provision that a child requires that is additional to and different from that received by other children to enable them to learn.

Speech and language therapy (SALT): Speech and language therapists (SLTs) are allied health professionals. They work closely with parents, carers and other professionals, such as teachers, nurses, occupational therapists and doctors. There are around 13,000 practising SLTs in the UK.

Statutory assessment: A statutory assessment is a detailed investigation to find out what your child's special educational needs are and what provision is needed to meet those needs. An assessment is the step before an EHC Plan, but doesn't always lead to an EHC Plan being issued. An EHC Needs Assessment is a Statutory Assessment.

Telephone case management hearing [tcmh]: Is a telephone call which takes place between the parent/parent representative, Local Authority representative and also the Tribunal Judge.

Upper Tribunal: is part of the administrative justice system of the UK. It was created in 2008 as part of a programme, set out in the Tribunals, Courts and Enforcement Act 2007, to rationalise the tribunal system, and to provide a common means of handling appeals against the decisions of lower tribunals. It is administered by Her Majesty's Courts and Tribunals Service.



HM Courts &
Tribunals Service



If you are not happy with a decision about Special Educational Needs (SEN)



EasyRead version of:
How to appeal a SEN decision.
SEND37.



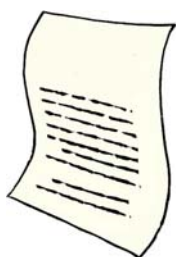
About this guide

1



How to contact the SEND tribunal

3



Section 1. Making an appeal

4



Section 2. Starting an appeal

13



Section 3. Before the hearing

21



Section 4. The hearing

31



Section 5. After the hearing

39



What the words mean

42

Some words are in **bold**.

There is a list of what they mean on the last page.



Some useful organisations

45

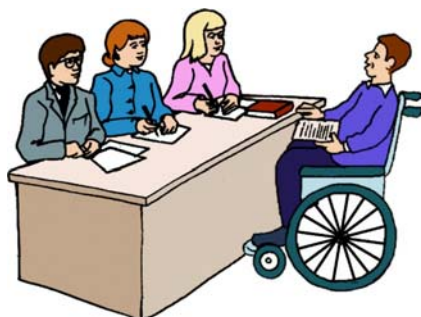


About this guide

HM Courts and Tribunals Service wrote this leaflet. We are part of the **Ministry of Justice**.



We make sure courts and **tribunals** work well and treat everyone fairly. A **tribunal** is a special court that looks at a problem or disagreement.



Usually a **tribunal** will hold a **hearing** to decide about your **case**.



The **SEND Tribunal** hears cases about:

- decisions local councils make about children and young people with **special educational needs and disabilities**



- a school that **discriminates** against a disabled child or young person.



This guide is about how to **appeal** to the **SEND Tribunal**.

You will need to download the right form from the website Court and Tribunal Forms for:



- **appeals** against a decision not to carry out an Education, Health and Care (EHC) assessment



- **appeals** against any other local council decision.

How to contact the SEND tribunal



Telephone:
01325 289350

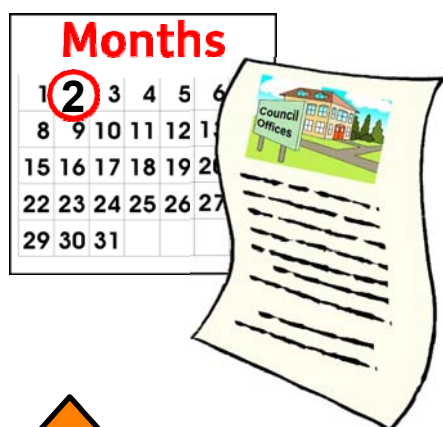


Email:
send@justice.gov.uk



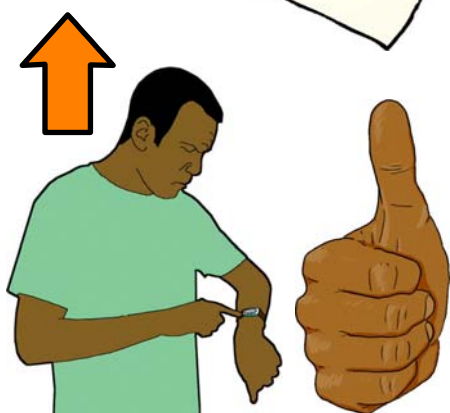
Write to:
**First-tier Tribunal Special Educational
Needs and Disability
1st Floor Darlington Magistrates' Court
Parkgate
Darlington
DL1 1RU**

Section 1. Making an appeal



When to appeal

You must **appeal** to the **SEND Tribunal** within 2 months of the date on the letter telling you the council's final decision.



You can ask for more time if you have a good reason.



You should think about **mediation** before you **appeal**. This is when someone independent tries to help you and the council sort things out.



Even if you do not use **mediation**, in most cases, you will need a certificate from a **mediation** service before you **appeal**. You must ask for this within 2 months of the date on your letter from the council.



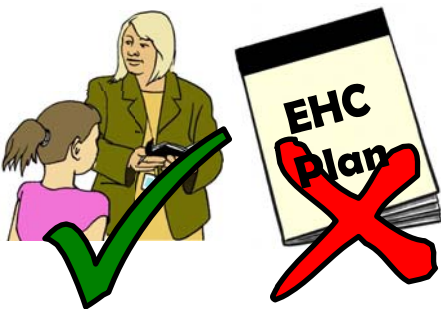
You have 30 days after the date on the **mediation** letter to appeal to the **SEND Tribunal**.

What you can appeal about

You can **appeal** if your local council:



- refuses an **EHC assessment** when a child, young person, their parents or their school or college ask for it



- does the **assessment** but will not give the child or young person an **EHC Plan**



- does not support the **EHC Plan** or change it when the child's or young person's needs change



- has written or changed the **EHC Plan** and you disagree with what it says in these parts of the plan: Section B, Section F or Section I.

Things the **SEND Tribunal** cannot decide

The **SEND Tribunal** cannot look at problems with:



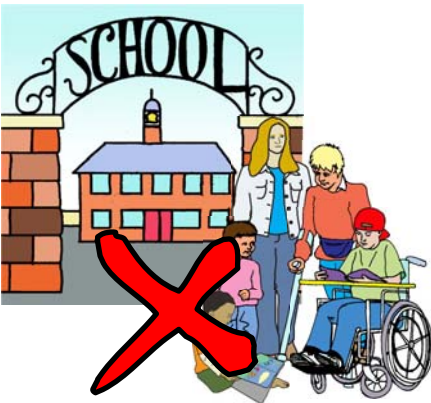
- how the council did the **assessment** or how long they took



- how the council, school or college give your child or a young person the support the **EHC plan** says they need



- section E of the **EHC plan** that says how things should turn out for them if your child or a young person gets this support



- **appeals** if your child or a young person cannot go to the school/college you or the young person want and they don't have SEN or a disability

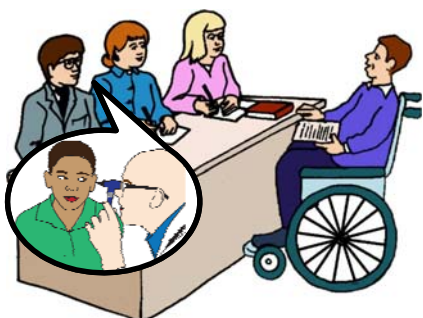


- **appeals** if your child is **excluded** (not allowed to go to school), unless you think this is discrimination because of their disability.



- the way the council writes something in these parts of your **EHC plan** A, J or K. You can ask the council to look at the plan again and change how they write something.

The National Trial



The **SEND Tribunal** is taking part in a trial in which the **Tribunal** can make suggestions on the health and care parts of an **EHC plan**.



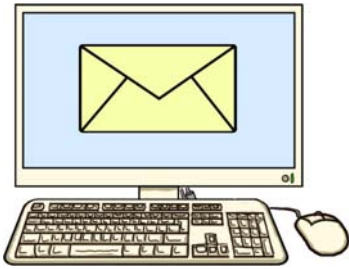
The **Tribunal** can only deal with applications for recommendations when there is an appeal against the education part of the **EHC plan**.

April 2018						
Mon	Tue	Wed	Thu	Fri	Sat	Sun
30						1
2	3	4	5	6	7	8
9		11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

The trial started on 3 April 2018 and lasts at least 2 years. If you are unhappy with something the **Tribunal** cannot deal with, talk to your council, school or college first.



If you are still not happy, you can complain to the Secretary of State for Education.



Email:

SEN.IMPLEMENTATION@education.gov.uk



If they agree with you, they could ask the council, school or college to put things right.



You might also be able to complain to the **Local Government Ombudsman**. They are independent and deal with some complaints about councils and public services.



Write to:

Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH



Telephone:
0845 602 1938



Website:
www.lgo.org.uk

Deciding whether to appeal



This guide tells you how to **appeal** but cannot say whether you will win or lose. Your council will tell you about groups that can help.

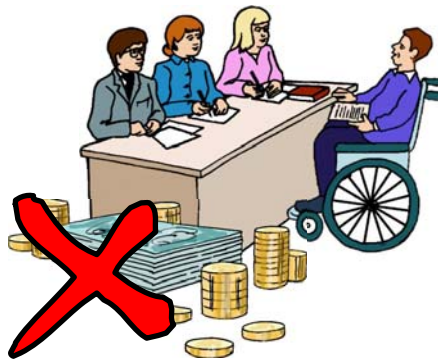


The council should also say which member of their staff will look at the things you are unhappy with.

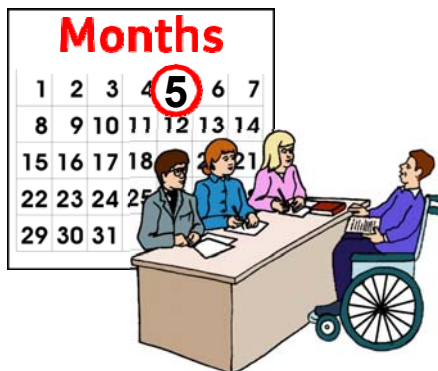


The person may tell you about an independent **representative** who could help with your **appeal**.

About the tribunal



The **SEND Tribunal** is free and you can claim money to pay for your travel to a **hearing**.



An **appeal** can take up to 5 months. Usually, you will only go to one **hearing** but sometimes, in difficult cases, the **tribunal** needs to meet again or talk about your case in a telephone hearing.



You might need to collect **evidence** to prove why you think the school or council is wrong.



Some people can get money to help pay a **solicitor** for help with this. The Law Society or Citizens Advice can tell you more about this.

Section 2. Starting an appeal



When to appeal

Post your **appeal** form to the **SEND Tribunal**, they must get it within 2 months of the date on the letter with the council's decision.



If your **appeal** is late you can ask the **Tribunal** for more time if you post your **appeal** form as soon as possible and say:

- why it is late



- why you think the **appeal** should go ahead



- why it will not affect the council if the **appeal** is late



- why you cannot wait for your child's next review or assessment



- anything else you think is important.

The **tribunal** judge will decide if it is fair for you to **appeal** late. If the judge refuses then the **appeal** stops.



You might get permission to **appeal** to the Upper Tribunal against the decision to refuse to accept the late appeal, but only if the **tribunal** made a mistake in law.

Why you want to appeal to the SEND Tribunal



When you **appeal** you must tell us the date of the letter from the council and which of the decisions you disagree with.



You cannot just say you disagree with the decision.

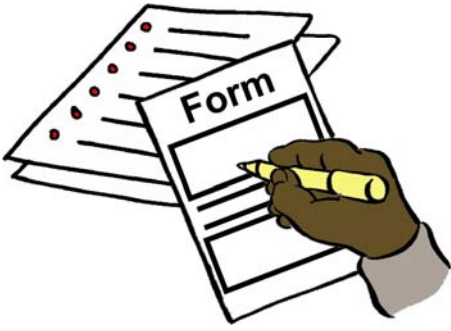


You do not have to write a lot but it is important to explain the **grounds** of your **appeal**. This means:

- why you think the decision is wrong



- what you want the **SEND Tribunal** to do.



If you have any **evidence** send it in with your form.

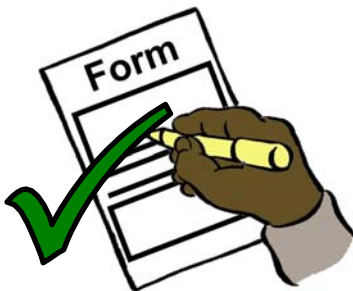


The appeal form

Someone else can fill the form in, but everyone who is making the **appeal**, must sign it.



You can ask us to send any letters to your **representative** or to another person making the **appeal**. This means we will not send them to you.



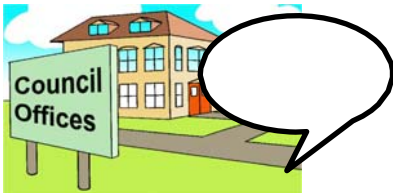
You must put the right information on each part of the form.



Section 1. Your child – or the young person who the appeal is about.



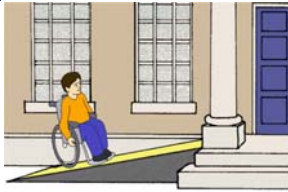
Section 2. What you are appealing against – this is where you explain why you are **appealing**.



Section 3. Your appeal – the decision you are **appealing** against.



Section 4. Your contact details – and contact details for your representative if you have one.



Section 5. Special requirements – any support you need with the **appeal** form or **hearing**.



Section 6. Claims about disability discrimination – say if you are already claiming for discrimination or if you want to know how to do this.



Section 7. Checklist – tick all the boxes to check you have all the information you need.



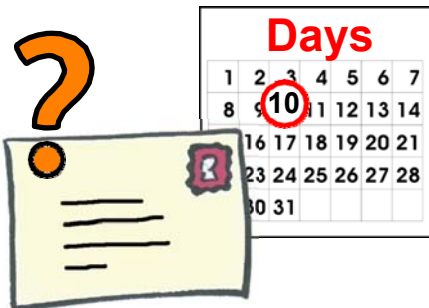
Section 8. Signatures – the **Tribunal** can only deal with your **appeal** if everyone signs the form.



Section 9. Sending the appeal – where to send your form.



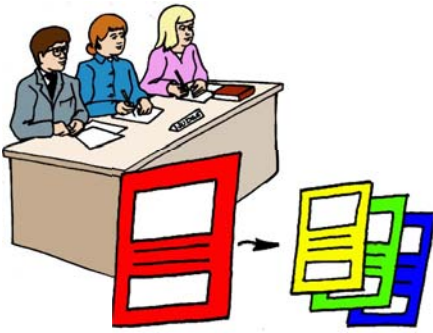
If anything is missing, the **Tribunal** will send the form back to you. They might not be able to look at your **appeal**.



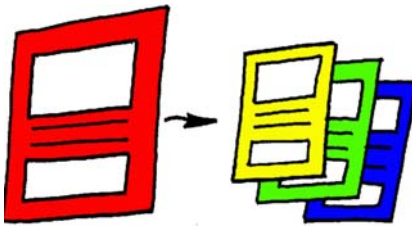
They will tell you what else you need to send them. You must send them in within 10 working days.



You can ask for more time. But if you send it back late and do not tell the **tribunal** why, your **appeal** will end.



You should send copies of papers to the **tribunal**, do not send the original documents.



But please only copy on one side of the paper.



Please tell us if you need extra help at court because of a disability. The tribunal staff will contact you about this.



Please also tell us if you need a foreign language interpreter.

Section 3. Before the hearing



After you send the appeal form

We will check your form to make sure your **appeal** meets the rules. We will do this in 10 working days.

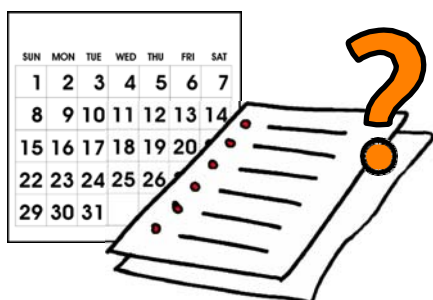


We will write to say we have your form and also:

- give you an **appeal** number to use if you talk to us about your case.



- tell you the fortnight when we will arrange your **hearing**



- tell you when you need to send the council and **Tribunal** information for the **hearing**



- give you other information about your **appeal**.

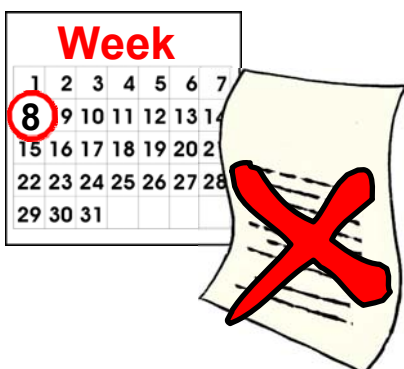


We will send a copy of your **appeal** to the council and ask them to reply. They should do this within 30 days.

What the council will do with your appeal



The council will write to you and say if they agree with your **appeal**. They will send a copy to the **Tribunal**.



If this does not happen within 8 weeks of the **Tribunal** getting your **appeal**, please tell us in writing.



We will tell the council when to send their **evidence** and information to the **Tribunal**.

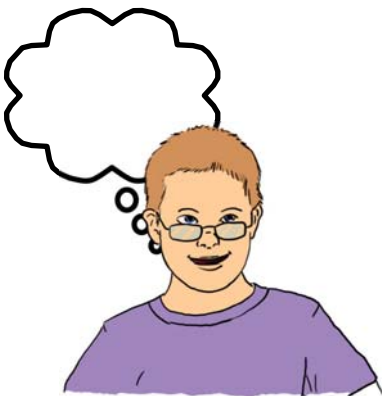


The council must tell the **Tribunal**:

- if they disagree with the **appeal** and why



- the facts they will use at the **hearing**



- what the child thinks about the decision, or why you could not find this out.



The council might want to talk to you about the **appeal** if they think they can sort things out without a **hearing**.



The council can apply to bring your **appeal** to an end if they think it is something the **Tribunal** cannot decide.



You will have the chance to say why you think this is wrong.

If the council agrees with your appeal



If the council agrees to change the **EHC Plan** you can stop the **appeal**.



If the council agrees to do anything else you asked for then the **appeal** ends. The council have a set time to do what they say they will.



If the council does not reply

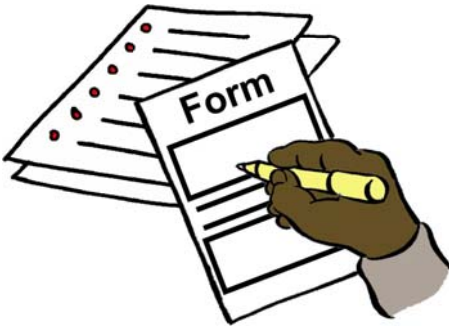
If the council does not reply in time the **tribunal** will write to ask why.



A judge will look at their reply and can decide to stop the council being involved.

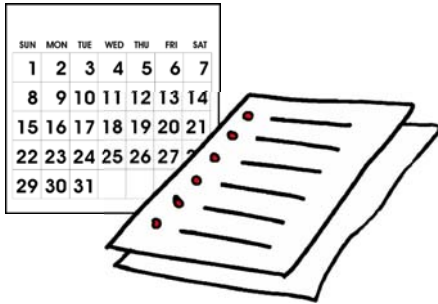


If this happens the **Tribunal** will either come to a decision using the papers or at a **hearing** without the council being there.



Evidence and information

Try to send all your evidence to the **SEND Tribunal** with your **appeal** form.



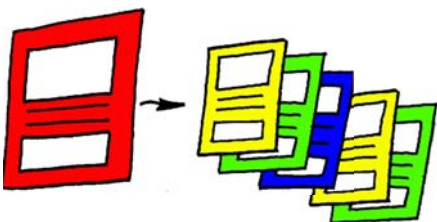
We tell you when you must send other **evidence** by.



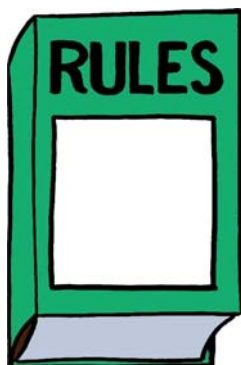
You must send copies of everything to the council as well.



Usually you cannot bring new **evidence** to the **hearing** unless there is a good reason and you have sent it to the council first.



You must bring 5 copies of the new **evidence** to give to the **tribunal** and other people at the **hearing**.



These rules are the same for you and the council.



If you cannot get information the **Tribunal** wants from another organisation, telephone the **tribunal** clerk to find out what to do.



People might talk about a **working document**.

This is a copy of the **EHC Plan** that you and the council use to show what changes you are asking the Tribunal to make.



The **SEND Tribunal** will look at this at the **hearing** and use it to make their decision.

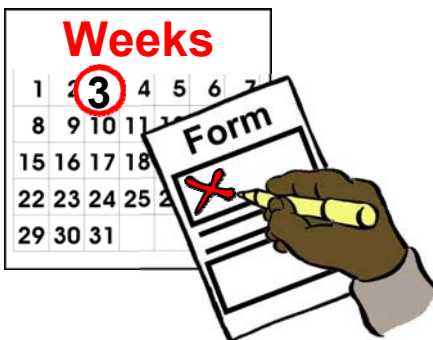


Changing your appeal

You can only change the reason for your **appeal** if the **SEND Tribunal** agrees.



You must fill in a form to say what changes you want to make and why, send it to the council and when you have their reply, send both the form and the reply to the Tribunal.



You must also fill in a form if you want to stop the **appeal**. You should do this at least 3 weeks before the **hearing**.



If it is later than this, a judge can say the **hearing** must go ahead so you can explain why you want to stop the **appeal**.



If you move to another area you must tell the **SEND Tribunal**. Your new council might take over your **appeal**.



Where the hearing will be

About 10 days before we will send the date and time of your **hearing** and tell you where it will be.

Days						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Sometimes we have to change things close to your **hearing** date. But we will try our best to let you know at least 2 days before.



3 weeks before the **hearing**, a **tribunal** judge or registrar will look at the **appeal** and decide if it is ready for a **hearing** or if more information is needed.



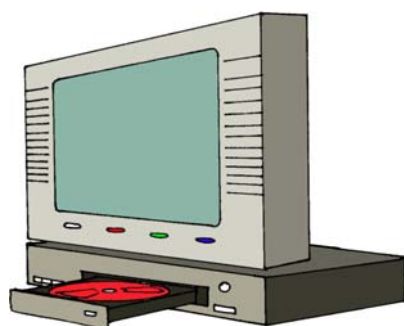
A judge can ask for a telephone **hearing** if they think it might be difficult to solve the problem using the papers they already have.

Section 4. The hearing

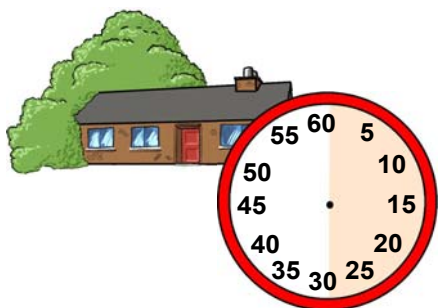
About the hearing



There is a film on YouTube that shows what happens at a hearing of a **special educational needs tribunal**. Type 'special educational needs tribunal hearing' into the search box.



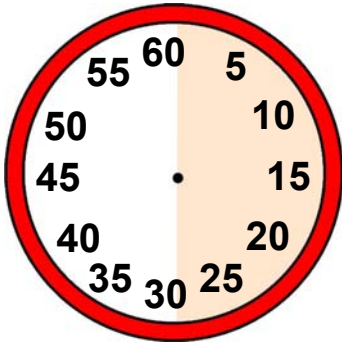
You can also ask the **SEND Tribunal** for a DVD.



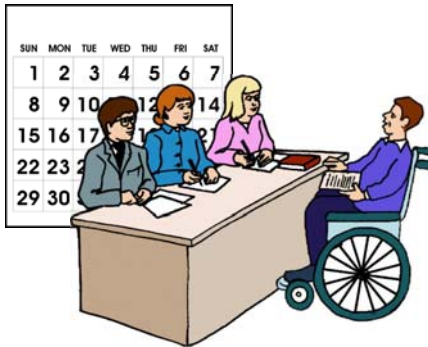
We try to make sure the **hearing** is less than an hour and a half away from your home.



Hearings can start at different times of the day. Check the letter carefully to see what time your **hearing** starts.



Please get there 30 minutes before it starts so you can find out what you need to do and ask any questions that you might have.



The **tribunal** might meet again if they need more time to look at things, they will arrange another date with you before you leave the **hearing**.



A judge will lead the **tribunal** and there will be one or two other people who know about children with special educational needs or disability or in a National Trial appeal, health and social care matters.



The judge will explain what will happen at the **hearing**.

Who can go to the hearing



You can agree to a **hearing** where you do not attend. If it helps if the **tribunal** hear what you think and ask questions, then the **Tribunal** will not agree to a **hearing** on the papers.



If you and the council agree, the **tribunal** can decide the **appeal** by looking at the papers. This means you do not need to go to the **hearing**. You can use the **appeal** form to say you want this or tell the **Tribunal** later.



Your child can come to the **hearing** and tell the **tribunal** what they think. You must ask someone to come and look after them when they are not in the hearing.



Both parents can come to the **hearing**. Even if you are not living together you should still tell them about the **appeal**. You can tell us if you do not want them at the **hearing**.

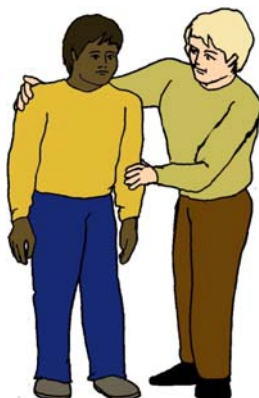


Representatives and supporters

All **SEND tribunal** hearings take place in private.



A **representative** can go to the **tribunal** with you or instead of you. Please tell us about this on the appeal form.



You can bring someone else to support you at the **hearing**. But they cannot speak or be involved. You must tell us who is coming and the **SEND Tribunal** can decide who can come into the **hearing**.



Witnesses

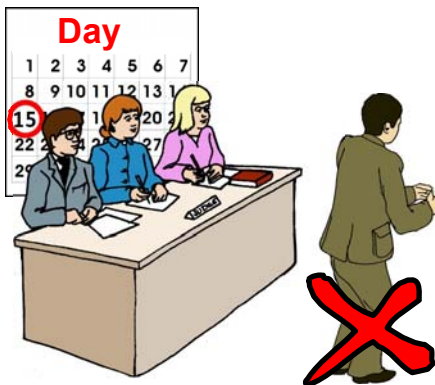
Please tell us if you want a **witness** to go to the **hearing**.



If you do not fill in the form to say who is coming the **tribunal** can decide to cancel the **hearing**.



You must ask us if you want to bring more than 3 **witnesses**.



If you want someone to be a **witness** but they will not come to the **hearing**, please let us know at least 15 days before the **hearing**. The **tribunal** can write and say the **witness** has to come if they agree with why you want them there.



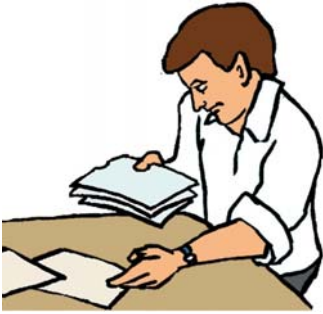
What happens at the hearing

A **tribunal** is like a court in some ways:

- the law says what rules it must keep to



- it is independent and not part of the government



- it looks at questions, facts and the law



- it listens to **evidence** and makes decisions



- it must be fair to everyone.



But a **tribunal** is more relaxed than a court

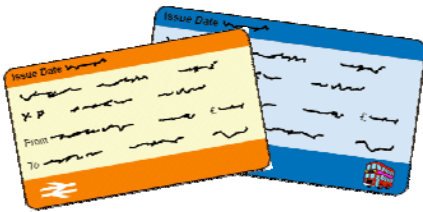


You will be able to ask the council and **witnesses** questions.

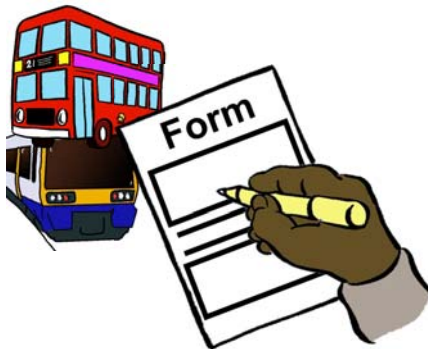


Money to pay for travel to the hearing

We will tell you about travel costs when we send you the date of your **hearing**.



Please keep all your tickets and receipts.



You and your **witness** can fill in a form after your **hearing** and we will pay the cost of public transport into your bank account. You can only claim taxi fares if we agree this first.



Please contact us:

Telephone:
01325 392760 or



Email:
sendistqueries@justice.gov.uk



Your **witness** can also claim loss of wages if their employer does not pay them while they are at the **hearing**.

Section 5. After the hearing



Telling you about the decision

The **tribunal** will write to tell you their decision and send a copy to the council. You should get this within 10 working days after the **hearing** has finished.



The council must do what the **SEND Tribunal** says within a set time. There are different times for different decisions.



If the council do not start when they should, you can ask the Secretary of State for Education or the High Court to make them do it.



Email:
SEN.IMPLEMENTATION@education.gov.uk



You can also complain to the **Local Government Ombudsman**. They are independent and deal with some complaints about councils and public services.



Write to:
Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH



Telephone:
0845 602 1938



Website:
www.lgo.org.uk



If you are not happy with the decision

When the **tribunal** writes to tell you their decision they will also say how to **appeal**.



You must write to us within 28 days of the decision. Tell us what you think was wrong and why you want a new decision.



If you do it later than this you must explain why. A judge can decide whether the **appeal** can go ahead although it is late.

What the words mean

Accessible

Easy to use or understand.

Appeal

Ask someone independent to look at a decision that you think is wrong.

Decision

A tribunal listens to all the evidence and then writes down what the council must do.

Discriminate

Treat someone worse than other people because of who they are.

Education, Health and Care (EHC) assessment

Find out what extra support a child or young person needs with their education, health and care.

EHC Plan

This plan says how a school or college must support a child or young person with special educational needs.

Evidence

Facts and information that prove whether something has happened or is required to happen.

Grounds

Your reasons for saying, doing or believing something.

Hearing

An official meeting that listens to the information and evidence and then decides on the facts and makes a decision.

Local Government Ombudsman

This is an independent organisation that deals with complaints about councils and public services. Usually when you are not happy with the way the organisation dealt with your complaint.

Mediation

When someone independent tries to help you and the council sort things out by meeting and talking.

Ministry of Justice

The part of the UK government department that manages the police, courts, probation service, prisons and other parts of the justice system.

Representative

Someone who speaks or acts for another person with their permission.

Solicitor

Someone who has training and qualifications in the law and can give advice and speak for you in some courts and in tribunals.

Special Educational Needs (SEN)

When a child or young person has a learning problem or disability that makes it more difficult for them to learn than other people who are the same age.

Tribunal

A special court that look at a problem or disagreement between a person and a government office.

Witness

Someone who has information or evidence to help the tribunal decide.

Some useful organisations



- **ACE Education**
36 Nicholay Road, London. N19
3EZ Telephone: 020 8407 5142
Website: www.ace-ed.org.uk



- **AFASIC**
20 Bowling Green Lane, London. EC1R
0BD Telephone: 0845 355 5577
Website: www.afasic.org.uk



- **British Deaf Association**
18 Leather Lane, London. EC1N
7SU Telephone: 020 7843 6000
Website: www.bda.org.uk



- **British Dyslexia Association**
Unit 8, Bracknell Beeches, Old Bracknell
Lane, Bracknell. RG12 7RW
Telephone: 0845 251 9002
Website: bdadyslexia.org.uk



- **Coram Children's Legal Centre** University of Essex,
Wivenhoe Park Colchester
CO4 3SQ Telephone: 08088
020 008 Website:
www.childrenslegalcentre.com



- **Council for Disabled Children**
National Childrens Bureau, 9 Wakley Street, London. EC1V 1JN
Telephone: 020 7843 6000
Website: www.ncb.org.uk
- **Council on Tribunals**
81 Chancery Lane, London. WC2A 1BQ
Telephone: 020 7855 5200
Website: www.council-on-tribunals.gov.uk



Department
for Education

- **Department for Education**
Sanctuary Buildings, Great Smith Street, London. SW1P 3BT
Telephone: 0370 000 2288
Website: www.education.gov.uk



 **Shaw Trust**
DLF is part of Shaw Trust

- **DIAL UK**
39-45 Cavell Street, London. E1 2BP
Telephone: 020 7791 9000
Website: www.dlf.org.uk



**Equality and
Human Rights
Commission**

- **Equality & Human Rights Commission**
Fleetbank House, 2-6 Salisbury Square, London. EC4Y 8J
Telephone: 0800 800 0082
Website: www.equalityhumanrights.com



- **Down's Syndrome Association**
Langdon Down Centre, 2a Langdon
Park, Teddington, Middlesex.
TW11 9PS
Telephone: 0333 1212 300
Website: www.down-syndrome.org.uk



- **Haemophilia Society**
1st Floor, Petershaw House,
57a Hatton Gardens, London. EC1N
8JG
Telephone: 0800 018 6068
Website: www.haemophilia.org.uk



- **Helen Arkell Dyslexia Centre**
Arkell Lane, Frensham,
Farnham, Surrey. GU10 3BW
Telephone: 01252 792 400
Website: www.arkellcentre.org.uk



- **I CAN**
8 Wakely Street, London. EC1V 7QE
Telephone: 020 7843
Website: www.ican.org.uk



- **IPSEA**
24-26 Gold Street, Saffron Walden
CB10 1EJ
Telephone: 0845 602 9579
Website: www.ipsea.org.uk



- **KIDS**
49 Mecklenburgh Square, London.
WC1N 2NY
Telephone: 020 7520 0405
Website: www.kids.org.uk



- **Mencap**
123 Golden Lane, London. EC1Y
0RT Telephone: 0808 808 1111
Website: www.mencap.org.uk



- **MIND**
15-19 Broadway, Stratford, London.
E15 4BQ
Telephone: 0300 123 3393
Website: www.mind.org.uk



- **National Autistic Society**
393 City Road, London. EC1V
1NG Telephone: 0808 800 4104
Website: www.nas.org.uk



- **National Blind Children's Society** Bradbury House, Market
Street, Highbridge, Somerset.
TA9 3BW Telephone: 01278 765
765 Website: www.nbcs.org.uk



- **National Deaf Children's Society**
15 Dufferin Street, London. EC1Y 8UR
Telephone: 0808 800 8880
Website: www.ndcs.org.uk



- **National Parent Partnership**
8 Wakley Street, London. EC1V 7QE
Telephone: 020 7843 6058
Website: www.parentpartnership.org.uk



- **National Sensory Integration Partnership (NatSIP)** Website: www.natsip.org.uk



- **National Society for Epilepsy**
Chesham Lane, Chalfont St Peter, Buckinghamshire. SL9 0RJ
Telephone: 01494 601300
Website: www.epilepsysociety.org.uk



- **Network 81**
10 Boleyn Way, West Clacton, Essex. CO15 2NJ
Telephone: 0845 077 4055
Website: www.network81.org.uk



- **Parents for Inclusion**
336 Brixton Road, London. SW9 7AA
Telephone: 0800 652 3145
Website:
www.parentsforinclusion.org.uk



- **Royal Association for Disability and Rehabilitation (RADAR)**
12 City Forum, 250 City Road, London. EC1Y 8AF
Telephone: 020 7250 3222
Website: www.radar.org.uk



- **Royal National Institute for the Blind** 105 Judd Street, London. WC1H 9NE Telephone: 0303 123 9999
Website: www.rnib.org.uk



- **Scope**
6 Market Place, London. N7 9PW
Telephone: 0808 800 3333
Website: www.scope.org.uk



- **Sense**
101 Pentonville Road, London. N1 9LG
Telephone: 0845 127 0060
Website: www.sense.org.uk

Credits



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EHC plan checklist

This checklist sets out what legally **must** be included as a minimum in any education, health and care plan (“**EHC plan**”) issued by a local authority (“**LA**”) under Part 3 of the Children and Families Act 2014 (“**the Act**”) (section 37) and the statutory guidance contained in the [Special Educational Needs and Disability Code of Practice 2015](#) (“**the Code**”).

The checklist is also based on the Special Educational Needs and Disability Regulations 2014 (“**the SEND Regs**”).

The sections we have used are required by the law or Code and **must** be kept separate and referred to by alphabetical reference. They do not have to appear in alphabetical order: LAs can include any other information or section they would like. Practically, all EHC plans should include basic details of the child, young person and their parents such as name, date of birth etc.

If an EHC plan does not contain **all** of the sections which are required¹ then it will not be legally compliant.

We suggest that this checklist can be used by:

- Parents/young people who are being consulted on the contents of a draft EHC plan, or are supporting their LA in developing a standard format for an EHC plan for their area;
- Independent Supporters, Information, Advice & Support Services (previously Parent Partnership Services) and anyone else guiding parents or young people through the process of statutory assessment potentially leading to an EHC plan;
- Schools receiving or advising on the contents of new EHC plans;

¹ Not all will be needed in every case; for example, not every parent/YP will want a personal budget or direct payments. In that case, the unnecessary sections should simply be left blank or marked ‘not applicable’.

- LAs to ensure that their EHC plan format is compliant with the minimum legal requirements.

The four underpinning principles

The preparation process and the contents of the EHC plan must reflect the four key statutory principles which LAs are required to have regard to:

- (a) the views, wishes and feelings of the child and his or her parent, or the young person;
- (b) the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the exercise of the function concerned;
- (c) the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions;
- (d) the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes.

(Section 19 of the Act.)

EHC plans should also be “*clear, concise, understandable and accessible to parents, children, young people, providers and practitioners*” (paragraph 9.61 of the Code).

The law requires needs and provision to be “*specified*”, which case law has established means they should not be vague, especially in the provision sections.

		What the Act, SEN Regs and Code says	IPSEA notes
SECTION A:	The views, interests and aspirations of the child and their parents, or of the young person	<p>Reg 12 requires the LA sets out the views, interests and aspirations of the child and his parents or the young person. This could include:</p> <ul style="list-style-type: none"> • Details about the child or young person's aspirations and goals for the future (but not details of outcomes to be achieved – see paragraphs 9.64 – 9.69 of the Code for more on outcomes for guidance). When agreeing the aspirations, consideration should be given to the child or the young person's aspirations for: <ul style="list-style-type: none"> ○ paid employment; ○ independent living; and ○ community participation. • Details about play, health, schooling, independence, friendships, further education and future plans including employment (where practical). • A summary of how to communicate with the child or young person and engage them in decision-making. • The child or young person's history. <p>If written in first person, the plan should make clear whether the child or young person is being quoted directly, or if the views of the parents or professionals are being represented.</p>	<ul style="list-style-type: none"> • The plan is a formal legal document. Some plans call this section 'All about me'. We query whether writing in the first person is appropriate unless specifically requested by the child/young person. • As the heading indicates, where the EHC plan is for a child the aspirations of the parents should be recorded as well as that of the child.
SECTION B:	The child or young person's special educational needs	<p>All of the child or young person's identified special educational needs ("SEN") must be specified (section 37 of the Act).</p> <p>SEN may include needs for health and social care provision that are treated as special educational provision because they educate or train a child or young person (see section 21(5) of</p>	<ul style="list-style-type: none"> • A SEN is a learning difficulty or disability which requires special educational provision. Special educational provision is educational or training provision that is additional to, or different from, that made generally for others of the same age in ordinary schools or other settings, or any educational provision for a child under two. • Each and every SEN must be specified, whether it

		What the Act, SEN Regs and Code says	IPSEA notes
		the Act and paragraphs 9.73 of the SEN Code onwards).	<p>is to be provided for by the school/FE college, the LA, the health service or any other provider.</p> <ul style="list-style-type: none"> • If the child needs health or social care provision that educates or trains the child or young person (such as speech and language therapy), then the need for that provision must be specified in this section. • If the same broad area of need requires more than one type of provision (e.g. physical difficulties may require both physio and occupational therapy) it must be split into more than one need, e.g. gross motor difficulties, fine motor difficulties. A judge has compared this section to a list of symptoms, each of which must be answered by an item in the list of special educational provision.
SECTION C:	The child or young person's health care needs which relate to their SEN	<p>Reg 12 requires that the EHC plan must specify any health needs identified through the EHC needs assessment which relate to the child or young person's SEN. Some health care needs, such as routine dental health needs, are unlikely to be related (paragraph 9.69 of the Code).</p> <p>The Clinical Commissioning Group ("CCG") may also choose to specify other health care needs which are not related to the child or young person's SEN (for example, a long-term condition which might need management in a special educational setting).</p>	<ul style="list-style-type: none"> • Section C concerns needs for health care. Educational needs arising from health issues are listed in Section B. • Despite the comment in the Code, some children and YP with SEN may need to use dentists or other health professionals trained for people with SEND for their dental or other health needs. Parents should try to ensure that these needs at least feed into the Joint Strategic Needs Assessments by LAs and CCGs so that commissioners of services are aware of the demand. This need could be specified in section C of an EHC plan.
SECTION D:	The child or young person's social care	<p>Reg 12 requires that the EHC plan must specify any social care needs identified through the EHC needs assessment which:</p> <ul style="list-style-type: none"> • relate to the child or young person's SEN; or 	<ul style="list-style-type: none"> • An EHC assessment must include an assessment of a child or young person's social care needs. If appropriate, this will entail a statutory assessment under children's or adults' social care legislation.

		What the Act, SEN Regs and Code says	IPSEA notes
	needs which relate to their SEN or to a disability	<ul style="list-style-type: none"> require provision for a child or young person under 18 under section 2 of the Chronically Sick and Disabled Persons Act 1970. <p>The local authority may also choose to specify other social care needs which are not linked to the child or young person's SEN or to a disability. This could include reference to any child in need or child protection plan which a child may have relating to other family issues such as neglect. Such an approach could help the child and their parents manage the different plans and bring greater co-ordination of services. Inclusion of this information must only be with the consent of the child and their parents.</p>	<p>Services must co-ordinate their statutory assessments so that families experience a streamlined process.</p> <ul style="list-style-type: none"> For children and young people under 18, the process of managing individual children's social care assessments is set out in the statutory guidance Working Together to Safeguard Children 2013. For young people over 18, any assessment will be subject to adult social care processes and the Care Act 2014, and para 3.56 of the Code.
SECTION E:	The outcomes sought for the child or young person (including outcomes for life)	<p>There should be a range of outcomes over varying timescales, covering education, health and care as appropriate but recognising that it is the education and training outcomes only that will help determine when a plan is ceased for young people over 18. Therefore, for young people aged over 17, the EHC plan should identify clearly which outcomes are education and training outcomes. See para 9.64 of the Code for more detail on outcomes.</p> <p>There must be a clear distinction between outcomes and provision. The provision should help the child or young person achieve an outcome; it is not an outcome in itself.</p> <p>The section can include:</p> <ul style="list-style-type: none"> Steps towards meeting the outcomes. The arrangements for monitoring progress towards these outcomes, including review and transition arrangements for the EHC plan and the arrangements 	<ul style="list-style-type: none"> IPSEA stresses the necessity for all parties of clearly identifying which outcomes relate to education and training. The principles require LAs to facilitate the development of the child or young person to achieve the "best possible" educational and other outcomes (one of the legislation's four underpinning principles: see introduction). Schools do not have prescribed duties to meet with parents or review EHC plans outside of annual reviews, so it may be helpful to describe in Section E how this will be done – for example, that they will meet with parents three times a year to assess progress towards shorter-term targets.

		What the Act, SEN Regs and Code says	IPSEA notes
		<p>for setting and monitoring shorter term targets by the early years provider, school, college or other education or training provider.</p> <ul style="list-style-type: none"> • Forward plans for key changes in a child or young person's life, such as changing schools or moving on to adult care and/or from paediatric services to adult health or moving from further education to adulthood. • For children and young people preparing for the transition to adulthood, the outcomes should include those that will prepare them well for adulthood and which are clearly linked to the achievement of the aspirations in section A. 	
SECTION F:	The special educational provision required by the child or young person	<p>Section 37 of the Act requires the LA to specify the special educational provision required. Provision must be detailed and specific and should normally be quantified, for example, in terms of the type, hours and frequency of support and level of expertise, including where the support is secured through a Personal Budget.</p> <p>Provision must be specified for each and every need specified in Section B. It should be clear how the provision will support the outcomes.</p> <p>Where health or social care provision educates or trains a child or young person, it must appear in this section (see para 9.73 of the Code).</p> <p>There should be clarity as to how advice and information gathered as part of the EHC needs assessment has informed the provision specified. Where the local authority has departed from that advice, they should say so and give</p>	<ul style="list-style-type: none"> • All special educational provision required to be put in place to support a child/young person in education and training should be specified. If it is needed it must be included, without regard to cost or convenience. Health authorities cannot veto health provision being included in this section. • The requirement to specify provision remains whether that provision is to be made by the school/institution, the LA, or other providers. • Note that provision must normally be quantified in terms of hours etc. This is a legal requirement. Exceptions to this, i.e. cases where flexibility is needed to meet the changing needs of a child/young person, are extremely rare in the experience of IPSEA (we could not think of actual casework examples). Case law has established that this flexibility may be written into the Plan only to meet the needs of the child/young person, not those of the school or the LA's systems. In any event a LA can review an EHC plan at any point if a child's or

		What the Act, SEN Regs and Code says	IPSEA notes
		<p>reasons for it.</p> <p>In some cases, flexibility will be required to meet the changing needs of the child or young person including flexibility in the use of a Personal Budget.</p> <p>The plan should also specify:</p> <ul style="list-style-type: none"> any appropriate facilities and equipment, staffing arrangements and curriculum; any appropriate modifications to the application of the National Curriculum, where relevant; any appropriate exclusions from the application of the National Curriculum or the course being studied in a post-16 setting, in detail, and the provision which it is proposed to substitute for any such exclusions in order to maintain a balanced and broadly based curriculum; where residential accommodation is appropriate, that fact; where there is a Personal Budget, the outcomes to which it is intended to contribute (detail of the arrangements for a Personal Budget, including any direct payment must be included in the plan and these should be set out in section J). <p>See para 9.131 of the Code onwards for details of the duties of the local authority to maintain the special educational provision in the EHC plan.</p>	<p>young person's needs change rapidly and therefore provision must be changed.</p> <ul style="list-style-type: none"> LAs should resolve conflicts between advice from different sources and state why they have reached their resolutions. If the child is in or beyond Year 9 (broadly speaking, 14 years old or older) this section must also set out the provision required to assist in the preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society. Therapies which educate or train a child/young person must be specified in this section instead of appearing in the health care provision or social care provision sections. For instance, where occupational therapy is required for educational activities, e.g. to enable stable sitting at a desk or gripping pens, manipulating objects etc., the provision must appear in this section. A useful test: if the provision was not delivered would the child or young person still be able to receive education and/or training on a par with those without SEN/disabilities? If this is in doubt then the provision must be included as special educational provision. Examples: <ul style="list-style-type: none"> speech & language therapy; physiotherapy; occupational therapy; CAMHS services (child and adolescent mental health services). These are often so fundamental to education they

		What the Act, SEN Regs and Code says	IPSEA notes
			<p>must be recorded as educational provision unless there are exceptional reasons for not doing so.</p> <ul style="list-style-type: none"> • Case law has established that speech and language therapy is normally special educational provision. • Once specified in this section, the LA must “secure” the provision, i.e. they must ensure that it is made. If a health body ceases to make the provision in this section, the duty falls on the LA. An LA may well delegate funding to a school or post 16 institution, but if those institutions cannot make the provision out of that funding, then the LA is legally obliged to do so (section 42 of the Act).
SECTION G:	Any health provision reasonably required by the learning difficulties or disabilities which result in the child/ YP having SEN	<p>Section 37 of the Act requires the specification of health care provision. Provision must be detailed and specific and should normally be quantified, for example, in terms of the type of support and who will provide it.</p> <p>It should be clear how the provision will support achievement of the outcomes, including the health needs to be met and the outcomes to be achieved through provision secured through a personal (health) budget.</p> <p>It should be clear how advice and information gathered in the EHC needs assessment has informed the provision specified.</p> <p>Health care provision reasonably required may include specialist support and therapies, such as medical treatments and delivery of medications, occupational therapy and physiotherapy, a range of nursing support, specialist equipment, wheelchairs and continence supplies. It could include highly specialist services needed by only a small</p>	<ul style="list-style-type: none"> • Where LAs depart from advice, they should say so and give reasons for it. LAs should resolve conflicts between advice from different sources and state why they have reached their resolutions. • Occupational therapy and physiotherapy or other therapies will be listed as educational provision when they educate or train a child or young person. It may be possible for therapy to appear under both health and educational provision if some provision relates to educational needs and some provision is needed for a health need. Case law has established that speech and language therapy is normally always special educational provision as communication is so fundamental to learning (Section F). • If the child is in or beyond Year 9 (broadly speaking, 14 years old or older) the health care provision must include that required to assist in the preparation for adulthood and independent living.

		What the Act, SEN Regs and Code says	IPSEA notes
		<p>number of children that are commissioned centrally by NHS England (for example, therapeutic provision for young offenders in the secure estate).</p> <p>The LA and CCG may also choose to specify other health care provision reasonably required by the child or young person, which is not linked to their learning difficulties or disabilities, but which should sensibly be co-ordinated with other services in the plan.</p> <p>See paragraph 9.141 of the Code for details of duties on the health service to maintain the health care provision in the EHC plan.</p>	<ul style="list-style-type: none"> Once specified in this section, the provision must be secured by the relevant health commissioning body. Only provision “reasonably” required must be included in this section, and health authorities can refuse to have provision included whether reasonably required or not. This section is therefore open to provision not being included on grounds of cost or convenience, unlike special educational provision in Section F. Once specified, the provision must be secured (section 42 of the Act). Where social care or health care educates or trains it must go in Section F as special educational provision. Likewise where it is required to enable a child/young person to access education, it should be included in Section F. Parents of children with very severe health needs may be able to ask for continuing health care. Details of continuing health care could be included in section G.
SECTION H1:	Any social care provision which must be made for a child/ YP under 18 resulting from s.2 Chronically Sick & Disabled Persons Act 1970 (CSDPA)	<p>Section 37 of the Act requires the specification of social care provision. Provision should be detailed and specific and should normally be quantified, for example, in terms of the type of support and who will provide it (including where this is to be secured through a social care direct payment).</p> <p>It should be clear how the provision will support achievement of the outcomes, including any provision secured through a Personal Budget. There should be clarity as to how the advice and information gathered has informed the provision specified.</p>	<ul style="list-style-type: none"> Section H1 relates only to children and young people under 18 who are receiving social care provision under section 2 of the Chronically Sick and Disabled Persons Act 1970 (CSDPA). The statutory guidance Working Together to Safeguard Children requires that within one working day of a referral to social services, a decision is made as to the nature of services and assessments (e.g. child in need or child protection, or both). Provision of services can begin immediately; it need not await completion of the social services assessment. Where these services are provided in accordance with Section 2 of the CSDPA these

		What the Act, SEN Regs and Code says	IPSEA notes
		<p>Section H1 of the EHC plan must specify all services assessed as being needed for a disabled child or young person under 18, under section 2 of the Chronically Sick and Disabled Persons Act 1970 ("CSDPA"). These services include:</p> <ul style="list-style-type: none"> • practical assistance in the home • provision or assistance in obtaining recreational and educational facilities at home and outside the home • assistance in travelling to facilities • adaptations to the home • facilitating the taking of holidays • provision of meals at home or elsewhere • provision or assistance in obtaining a telephone and any special equipment necessary • non-residential short breaks (included in Section H1 on the basis that the child as well as his or her parent will benefit from the short break) <p>This may include services to be provided for parent carers of disabled children, including following an assessment of needs under section 17ZD-17ZF of the Children Act 1989.</p> <p>See paragraph 9.137 of the SEN Code onwards for details of the duties on LAs to maintain the social care provision in the EHC plan.</p>	<p>must be detailed in this section of the EHC plan.</p> <ul style="list-style-type: none"> • If the child is in or beyond Year 9 (broadly speaking 14 years old or older) the social care provision required to assist in the preparation for adulthood and independent living must be included here. For example, support in finding employment, housing or for participation in society. • Where social care or health care educates or trains it must go in section F as special educational provision. Likewise where it is required to enable a child/young person to access education, it should be included in section F.

		What the Act, SEN Regs and Code says	IPSEA notes
SECTION H2:	Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child/young person having SEN	<p>Social care provision reasonably required may include provision identified through:</p> <ul style="list-style-type: none"> • early help; and • children in need assessments; and • safeguarding assessments for children. <p>Section H2 must only include services which are not provided under Section 2 of the CSDPA. For children and young people under 18 this includes residential short breaks and services provided to children arising from their SEN but unrelated to a disability. This should include any provision secured through a social care direct payment. See chapter 10 of the SEN Code for more information on children's social care assessments.</p> <p>Social care provision reasonably required will include any adult social care provision to meet eligible needs for young people over 18 (set out in an adult care and support plan) under the Care Act 2014. See Chapter 8 for further information about adult care and EHC plans.</p> <p>The local authority may also choose to specify in section H2 other social care provision reasonably required by the child or young person, which is not linked to their learning difficulty or disabilities. This will enable the local authority to include in the EHC plan social care provision such as:</p> <ul style="list-style-type: none"> • child in need; or • child protection plans; or • provision meeting eligible needs set out in an adult care plan, <p>where it is unrelated to the SEN but appropriate to include in</p>	<ul style="list-style-type: none"> • Social care provision contained in Section H2 will be any other social care provision reasonably required (by the child or young person's learning difficulties or disabilities which result in SEN). Note that this is only provision "reasonably" required, so LAs can take into account cost and convenience, unlike the provision in Section F. • If the child is in or beyond Year 9 (broadly speaking, 14 years old or older) the social care provision required to assist in the preparation for adulthood and independent living must be included here. For example, support in finding employment, housing or for participation in society.

		What the Act, SEN Regs and Code says	IPSEA notes
		<p>the EHC plan.</p> <p>See paragraph 9.137 onwards of the SEN Code for details of duties on local authorities to maintain the social care provision in the EHC plan.</p>	
SECTION I:	Placement	<p>Reg 12 requires this section to include the name and type of the school, maintained nursery school, post 16 institution or other institution to be attended by the child or young person (or, where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the child or young person).</p> <p>These details must be included only in the final plan, not the draft plan sent to the child's parents or to the young person.</p> <p>See paragraph 9.78 of the SEN Code onwards for more details.</p>	<ul style="list-style-type: none"> • These details are only included in the final plan so that the LA does not pre-empt consideration of any preference for an institution which the parents or young person may state, or any representation the parents or young person may make in favour of an independent school or institution. • If a school or other institution is named in this section, it must admit the child or young person. This duty applies to maintained nurseries, schools and post-16 institutions; academies and free schools; non-maintained special schools; and independent schools or colleges approved under s.41 of the Act. The only schools it does not apply to are wholly independent schools. • If parents have decided to electively home educate their child under section 7 of the Education Act this should be specified in this section.
SECTION J:	Personal Budget (including arrangements for direct payments)	<p>This section should provide detailed information of any personal budget that will be used to secure provision in the EHC plan.</p> <p>It should set out the arrangements in relation to direct payments as required by education, health and social care regulations.</p>	<ul style="list-style-type: none"> • Any amount of money specified in this section must be enough to secure the provision specified. It is, therefore, essential that the type and amount of provision is adequately specified, e.g. as well as amount of time per week, the qualifications and experience and therefore pay grade of a specialist teacher.

		What the Act, SEN Regs and Code says	IPSEA notes
		The special educational needs and outcomes that are to be met by any direct payments must be specified (Reg 12).	
SECTION K:	Advice & information	The advice and information gathered during the EHC needs assessment must be set out in the appendices to the EHC plan. There should be a list of this advice and information (Reg 12).	<ul style="list-style-type: none"> • The list should include brief details of who gave the advice and when, e.g. John Smith, NHS speech and language therapist, 12 October 2014. • Copies of all the advice and information gathered during the statutory assessment process should be attached to the EHC plan as appendices, including any private reports submitted by parents as part of their own evidence.

Refusal to assess pack:

Advice for parents and young people appealing to the Special Educational Needs and Disability Tribunal

Contents

1	How to use this pack	2
2	The practicalities	3
2.1	What is the SEND Tribunal?	3
2.2	What powers and duties does the SEND Tribunal have?	4
2.3	Your right of appeal	4
2.4	Giving your reasons for your appeal	6
2.5	What to send in with your form	7
2.6	Evidence	7
2.7	Legal help	8
2.8	Action checklist	8
2.9	Timetable of the appeal process	9
3	Making your case	10
3.1	The law and your case	10
3.2	What if the school/institution could do more?	11
3.3	What the LA may reply	12
3.4	Your reasons for appeal	13
3.5	Evidence about difficulties	14
3.6	Evidence about what cannot be provided without an EHC plan	16
4	The legislation	18
4.1	Identification and assessment of children and young people with special educational needs	18
4.2	What are special educational needs and provision?	22
4.3	Schools' and LAs' obligations to publish SEN information	23
5	Case law	33
6	Further help	35

1 How to use this pack

This pack has been written to help you take an appeal to the First-tier Tribunal (Special Educational Needs and Disability) (the “**Tribunal**”) against a local authority’s (“**LA’s**”) refusal to assess your child or, if you are a young person, you. This pack relates to the law in England, the Children and Families Act 2014 (the “**Act**”).

Unfortunately IPSEA is not able to offer casework support to everyone who uses our services but we hope this pack will help you put together an effective case and benefit from our many years of supporting parents at Tribunal.

The [SEND Tribunal’s website](#) provides useful information on the procedures and how to submit your case.

There is no set way of using this pack – but it is probably useful to begin with section 2, the practicalities, which includes a checklist and timetable to help you remember what you must do and when.

Because this pack focuses on one kind of appeal only – against a decision not to conduct an EHC needs assessment – we have been able to provide detailed advice on making your case and this forms section 3 of the pack. You will see we refer to and explain the law throughout but the actual law – quotations from the Act and the SEN and Disability Regulations 2014 – is left to the end so as not to overwhelm you at the start! You might want to look at this to see precisely what the law says LAs must do and what your rights are as a parent/young person.

All refusal to assess appeals which are registered will now be dealt with by way of a ‘paper hearing’ and you will not be required to attend a Tribunal hearing (unless you want to do so and the SEND Tribunal has ordered that this should happen).

It is possible that an oral hearing of a refusal to assess appeal might still take place, although it is not anticipated that this will be common. In the vast majority of cases there would appear to be no advantage in asking for an oral hearing, and it is likely to simply increase the time taken to reach a decision in your case (rather than it resulting in a different outcome). It is possible that an oral hearing might be ordered by the SEND Tribunal and it is understood that this might occur in a case where, for example, there was genuine dispute over the fact that a child had special educational needs, or the expert evidence on the nature of the special educational provision required was not consistent.

If this happens you should get advice from IPSEA’s Tribunal Helpline (you can find details of how to contact us on [our website](#)).

Finally, we want to wish you well with your appeal and hope that our pack enables you to prepare the best possible case.

Key to abbreviations and terms

Code	the Special Educational Needs and Disability Code of Practice 2014
EP	educational psychologist
LA	local authority
LSA	learning support assistant
SEN	special educational needs
SENCO	special educational needs co-ordinator (the teacher responsible for overseeing provision for children with SEN)
TA	teaching assistant

2 The practicalities

2.1 What is the SEND Tribunal?

The SEND Tribunal is an independent national tribunal which hears parents' and young people's appeals against LA decisions about the special educational needs of children and young people. It also hears claims of disability discrimination against schools.

It produces a free booklet, *How to Appeal*, and a DVD, *Right to be Heard*, which is also [available on Youtube](#). The booklet includes the appeal form, which can also be downloaded separately from <http://www.justice.gov.uk/forms/hmcts/send>.

The booklet and DVD are available via the SEND Tribunal helpline 01325 289350 or from the postal address or website below:

HMCTS - Special Educational Needs & Disability Tribunal

1st Floor

Darlington Magistrates Court

Parkgate

DL1 1RU

www.justice.gov.uk/tribunals/send

SENDISTQUERIES@tribunals.gsi.gov.uk

2.2 What powers and duties does the SEND Tribunal have?

There are limits to what the SEND Tribunal can decide. If you win your appeal it can order your LA to make an EHC needs assessment. It cannot order the LA to draw up an Education, Health and Care plan (EHC plan) at the same time and it cannot order a school to make provision (extra help for you or your child) if it concludes that an EHC needs assessment is not needed.

The SEND Tribunal is governed by the law, both the Act of Parliament and its associated regulations, and has to follow the interpretation of that law by higher courts in judgments about previous SEN disputes. The SEND Tribunal must 'have regard' to the SEN and Disability Code of Practice¹ (the "**Code**") which advises schools and LAs on identifying and making provision for children with SEN. The SEND Tribunal is not bound to follow the Code to the letter but it generally accepts the Code's guidance in coming to its decisions.

The SEND Tribunal looks at the evidence put before it and decides whether the LA decision followed the law and the Code. It will also make a decision based on what is right for the child at the date of the hearing.

The beginning of Chapter 9 of the Code is useful to read to understand how LAs make decisions about whether to assess.

2.3 Your right of appeal

The letter from your LA turning down a request for an EHC needs assessment must arrive within six weeks of that request and must tell you about:

- (a) your right to appeal that decision;
- (b) the time limits for doing so;
- (c) information about mediation;
- (d) the availability of—
 - (i) disagreement resolution services; and
 - (ii) information and advice about matters relating to the special educational needs of children and young people.

¹ Statutory guidance which tells LAs and others how to carry out their SEN duties: *Special educational needs and disability code of practice: 0 to 25 years*, Ref. DFE-002052013.

Download from:

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

Your LA must also tell you when it refuses a request for assessment from a school or institution, or if the LA itself has otherwise become aware that a child or young person may have SEN and has then decided not to conduct an EHC needs assessment. In both these cases it must make the decision within six weeks of the request or of becoming aware and inform you of it and that you have a right of appeal to the SEND Tribunal.

This is an appeal under section 51(2)(a) of the Act against a decision made under section 36 of the Act. (See section 4: the legislation.)

Note: you have no right of appeal if the LA has carried out an EHC needs assessment in the past six months.

To be able to appeal, you must be a parent or a young person over the age of 16. In education law 'parent' means you are either a birth parent, have acquired parental responsibility or have care of the child (e.g. a foster parent or grandparent with whom the child lives).

Appeal deadlines and mediation

To check your deadline for sending your appeal to the SEND Tribunal, first, look at the date on the letter from the LA – **make a note of the date two months after this**. This is the deadline by which you must register your appeal with the SEND Tribunal.

However, this deadline may be changed when you receive a mediation certificate.

The law says you have to consider whether to enter mediation before you can register your appeal so at the very least you must ring the number the LA gives you (there should be alternatives if you cannot use a phone), talk to a mediation adviser, and get a certificate from them saying you have done so. You do not have to engage in mediation to register your appeal, only consider it, and if you have had a lot of discussions already with your LA you may feel it would be of little use and you want to save time, get your certificate, and appeal right away. If you have never had a proper talk with the LA about why they have refused assessment, mediation may help. You might also consider it to give yourself more time to appeal as your deadline for registering an appeal changes: your deadline then becomes two months from the date of the decision letter, or one month from the date a mediation certificate is issued, whichever is the later. You may well want to talk to IPSEA about things to be aware of before going into a mediation session.

In the letter refusing assessment, your LA must provide you with the following information on your rights of appeal:

- (a) your right to appeal that decision;
- (b) the time limits for doing so;
- (c) information about mediation;

(d) the availability of—

- (i) disagreement resolution services; and
- (ii) information and advice about matters relating to the special educational needs of children and young people.

The SEND Tribunal may well waive the two-month deadline if all this information is not provided and you would be allowed to appeal late.

Mark any deadlines on your calendar and in your diary. (If the two months/one month ends in August you have until the first working day in September to get the form to the SEND Tribunal.) If you have missed your deadline get advice from IPSEA's Tribunal Helpline. You can book a Tribunal Helpline call back by clicking here: <https://www.ipsea.org.uk/contact/advice-and-support/tribunal-helpline>

Filling out the appeal form

In the boxes, fill in:

- Your child's name and date of birth, or yours if you are a young person
- Your name and address
- Details of anyone else who has parental responsibility (if you have difficulties with this talk to IPSEA)
- The name of your LA and the date you were informed in writing that they would not carry out an EHC needs assessment
- Any special requirements to make the process accessible to you: say here if, for instance, you need documents translated, wheelchair access, a reader or a signer, or cannot manage negotiations over the phone.
- In the appropriate section of the form, say that you have asked the LA for an EHC needs assessment but it has refused
- The reasons for your appeal: it is often easier to put these on a separate sheet and write 'See separate sheet headed Reasons for Appeal' in the box on the form.

2.4 Giving your reasons for your appeal

This is where you set out why you think the LA must assess your child, or you as a young person. Try to put in everything you need to say, your full case, at this point (Section 0: Your reasons for appeal will help you with this).

You must send in enough information for the LA to be able to respond.

DO

- Keep it short and to the point.
- Separate your points into paragraphs.
- Number your paragraphs or organise them under headings.
- Refer to any evidence that backs up your points. (You can send more evidence later and should say so, if for instance you will be getting a speech therapy report because the LA has not obtained one.)
- Refer to the legal issues.

DON'T

Get bogged down on history. If there is a long history of difficulties between you and the LA let the evidence (e.g. letters between you and the LA) speak for itself.

2.5 What to send in with your form

With the completed and signed form send the SEND Tribunal the following:

- A copy of the letter the LA sent you that told you of its decision
- Your mediation certificate
- Your evidence for your child needing assessment
- A document listing all your items of evidence

Don't send original documents, send photocopies, and keep a copy of everything you send, including the form.

2.6 Evidence

It is important to obtain any written evidence as soon as you can. It is best to send in all your written evidence with your appeal form because this means you have the main substance of the case set out with supporting evidence right from the start and you may discover more about the LA's arguments if it is able to respond fully. If you have a good case and evidence, the LA may give in rather than fight the appeal.

If you think you need to send in evidence later in the process, tell the SEND Tribunal what you expect to obtain and when and submit it by the deadline you are given.

If you are having difficulty getting information which is relevant to your case from the LA, you can write to the SEND Tribunal explaining what the document is and ask the SEND Tribunal for a 'direction' to make the LA release the document: contact the SEND Tribunal and ask for a 'Request for Changes' form, or [download it from the SEND Tribunal site](#). Unless the LA has a good reason for not providing the document the SEND Tribunal will order the LA to release it.

2.7 Legal help

Under the legal help scheme, a parent or young person on a low income may be able to get limited free legal help from a solicitor. There is a legal aid checker at <http://legal-aid-checker.justice.gov.uk/>.

2.8 Action checklist

- 1 Get hold of the booklet How to Appeal from the SEND Tribunal (or download it from [their website](#)).
- 2 Work out the last date to send in your appeal and make a note of this. (See section 2.9: Timetable of the appeal process below.)
- 3 Complete the appeal form including your reasons for appeal. Make sure you sign the form and your reasons if they are separate.
- 4 Make copies of the LA's decision letter, your appeal form, your mediation certificate and any evidence you are sending to the SEND Tribunal. Make another set of copies for your adviser if you intend to seek advice.
- 5 Write to the LA and school if you need further information. (You can use the model letters in the next section, 3: Making your case.)
- 6 Arrange for any independent reports on you or your child. (See section 0: Evidence about difficulties.)
- 7 Get hold of a copy of the Code (See section 5: Further help.)
- 8 Send the appeal form, reasons for appeal and any other documents to the SEND Tribunal office within the deadline.
- 9 Make notes of the deadlines for the LA to respond, and for sending in further information.

- 10 Gather any remaining evidence and submit as soon as possible.

2.9 Timetable of the appeal process

- LA sends decision letter to you. Your appeal must reach the SEND Tribunal within **two months** of the date on the letter, or **one month** from the date you obtain a mediation certificate, whichever is the later.
- After you send in your appeal, the SEND Tribunal replies within **10 working days**² registering your appeal.
- In this response, the SEND Tribunal tells you about important dates. It tells you when the LA are required to respond to your appeal, gives you a deadline to send further information and tells you when the SEND Tribunal will be considering your case and making a decision. This will be a window of time between two dates around ten days apart.
- At the same time, the SEND Tribunal writes to the LA, sending them a copy of your appeal documents.
- The LA submits its response to the SEND Tribunal **within 30 days of receiving your appeal documents from the SEND Tribunal**. The LA must state whether it opposes your appeal and why. The LA must send you a copy of its response at the same time: tell the SEND Tribunal if you do not get it within the 30 days.
- Ensure that any evidence you didn't send in with your appeal form gets to the SEND Tribunal by any deadline it gives you, and send a copy to the LA at the same time.
- At least **10 working days** before considering your appeal and making a decision, the LA should send you and the SEND Tribunal the 'bundle', a page-numbered set of the documents the SEND Tribunal has been sent in the case.
- Generally you will receive the decision and reasons in writing **within ten working days** of the SEND Tribunal considering your case.
- If the SEND Tribunal decides in your favour, the LA has **four weeks** to begin the EHC needs assessment.
- If you feel there has been an error or have some other serious reason for thinking the decision is wrong, you have **28 days** to apply for a Tribunal review. If necessary contact IPSEA for advice.

² Working days do not include Saturdays, Sundays, bank holidays, any day between 25 December to 1 January, or any day in August

3 Making your case

The LA has turned down your request for an EHC needs assessment. How do you begin challenging this? The previous section gave you a guide to the type of evidence you will need, but what exactly are you trying to prove?

3.1 The law and your case

The Act says that an LA must identify and make an EHC needs assessment of those children and young people in their area who have or may have special educational needs and who may need an EHC plan.

Although plans are called 'Education, Health and Care plans' they cannot be triggered by health and care needs, only educational ones.

This means you will need to convince the SEND Tribunal that an EHC plan may be necessary to provide the right educational help for your child or you yourself as a young person.

Generally there are three ways of establishing this. You can argue that:

- 1 a full assessment is the only way to find out what the difficulties are and what help is needed;
- 2 the school/institution may not be able to supply all the educational help needed unless it receives extra help from the LA;
- 3 the school/institution has provided all the help that could be expected but the child or young person has not made enough progress.

Now you need to plan your case around the points which fit your case.

There are at least two different approaches to take:

- A Where point 1 (above) applies, you need to make the case that advice from a number of different professionals is needed to fully understand your child's difficulties (or yours if you are a young person). In other words, professionals do not yet understand enough about the difficulties and only a full investigation can help everyone understand the nature and severity of the difficulties and decide what help is needed. Often this is not enough on its own to persuade the SEND Tribunal. You may also have to show that they may need an EHC plan if their needs are to be met (see B).
- B For points 2 and 3, you need to make the case that the needs may not be met without an EHC plan. You do not have to prove that an EHC plan is necessary, only that it may be necessary. The law says that where an LA needs to secure the

provision needed by a child with a learning difficulty, then the LA must draw up and maintain an EHC plan (see sections 4.1: Identification and assessment of children and young people with special educational needs and 4.2: What are special educational needs and provision?).

In many cases both approaches will apply. Whichever you decide fits your case best, keep going back to the points as you plan your case to make sure that you are focusing on what you have to demonstrate to the SEND Tribunal.

3.2 What if the school/institution could do more?

An appeal against a refusal to assess is easiest if the early years provider, school or post-16 institution backs you, but this is not essential. It may be harder if you believe that lack of progress is because of the failure of the early years provider, school or post-16 institution to provide help that is well within its resources. There are some cases, however, where the SEND Tribunal can decide it is necessary for the LA to issue an EHC plan just because the early years provider, school or post-16 institution won't or can't make provision. This can occur in a variety of situations. Often it is where the school or other setting has a different understanding of the difficulties to yours and refuses to increase the help. But it could be the result of in-setting factors such as staffing problems, where inspectors have found the setting is failing to provide a proper education, or where the special educational needs budget has been spent on something else. See the information about case law on this subject at the end of this briefing.

Sometimes the early years provider, school or post-16 institution will say that it has done all it can but the LA says it hasn't. This leaves you or your child in a difficult position. You may be unsure who is right. If you are dealing with a school you could begin by asking what it actually gets as funding for SEN and how that is used. Maintained schools, including maintained nursery schools and academies, must publish a great deal of information in their SEN Information Reports, but that information does not go into details of funding and you need to find those out (see section 0: Evidence about what cannot be provided without an EHC plan below).

You can also ask the LA what help it normally expects local schools to provide for children with your child's learning difficulty.

The LA has to explain, on its website as part of its 'Local Offer' what help it expects local and out-of-area early years providers, schools, alternative education providers and post-16 institutions to provide for children with SEN. It also has to explain its criteria for assessment. (See section 4.3: Schools' and LAs' obligations to publish SEN information for the legal requirements of local offers.) If it has failed to provide this information or has done it in an unhelpful way, you may have to press the LA for information.

You can write to ask for the information using model letter 1 below. If the LA delays in replying, do not miss your deadline for appealing. You can always withdraw your appeal if the information you receive makes you think again about your case.

Model letter 1

(You should send this letter to the address on the letter refusing your request for assessment)

Dear Head of SEN

I am considering whether to appeal against the authority's decision to refuse an EHC needs assessment of my child (*give name, school and date of birth*). I would like you to provide me with the following information:

- Details of the help you expect local schools to provide for children with my child's special educational needs/disability. (*Describe their special educational needs and/or disability briefly here.*)
- The amount of money you delegate to my child's school for children with SEN but without EHC plans.
- Details of the criteria you use to decide when to make an EHC needs assessment of children with my child's special educational needs/disability.

I should be grateful if you could reply promptly.

Yours faithfully

(your name)

3.3 What the LA may reply

The LA is likely to say that it delegates (passes on) most of the money for special educational needs to its schools so the school can decide the help your child should get. Remember that although LAs across the country delegate much of the SEN budget to schools, they cannot delegate their legal duties to children and young people with special educational needs.

The LA may say you as a young person or your child does not fit its criteria for making an EHC needs assessment. The SEND Tribunal is not bound by the LA's criteria, however, and, while it will take into account the way the LA or a college organises its SEN support, it will want to be sure that the school/college fully understands the special educational needs

in this individual case and can make all the provision needed. If it is not convinced it can, then it may order an assessment. Remember that you only have to show that you or your child ‘may’ need special educational provision to be provided in accordance with an EHC plan, not that this is probably or definitely the case.

Some authorities may say they never issue EHC plans for children and young people in mainstream schools or for children and young people with a particular disability, or for anyone who does not fall into the bottom 2 per cent of abilities. These are blanket policies and are unlawful and the SEND Tribunal will know this. The Code also makes this clear at paragraph 9.16:

*“Local authorities **must not** apply a ‘blanket’ policy to particular groups of children or certain types of need, as this would prevent the consideration of a child’s or young person’s needs individually and on their merits.”*

You can complain to the Secretary of State (the Government minister for education) if your LA continues to use this ‘reason’ after you have pointed out what is wrong with it.

If after considering all these points you decide that your school/college should be providing more, then seek further advice about what to do. If you decide that the LA must assess what help your child should get, then you will need to proceed with an appeal against their decision to refuse your request for a statutory assessment.

3.4 Your reasons for appeal

When you lodge your appeal with the SEND Tribunal you will be asked to give your reasons. Although you can provide evidence at a later stage, this is the time to give your arguments.

Go back to points 1–3 listed under heading 3.1. Now set out your reasons to go with your appeal form, using the points that fit your case, giving at least a little detail about why you believe this.

For example:

Example 1

A full assessment is the only way to identify my child’s difficulties and find out what my child needs. Jack has been excluded from school twice in the past term. Although he receives a lot of extra help for his behaviour, Jack doesn’t seem to understand what he has done wrong. I believe difficulty with understanding school work may be a factor but nobody seems sure about why Jack has difficulty learning or why he behaves as he does.

Example 2

The school could not normally give all the educational help my child needs unless it receives extra help from the LA. The nursery school has had to provide much more help for Riath than they would normally provide for children with special needs without EHC plans. The staff at the nursery believe Riath will need an EHC plan to manage mainstream school.

Example 3(a)

The school has given my child all the help that could be expected but she has not made enough progress. Leila has received a high level of help for over a year and her progress is very slow. The other children are leaving her further and further behind.

Example 3(b)

The school has been able to give my child all the help that could be expected and she has made progress, but only with a great deal of extra help. Now she is coming up to the year she's 16, the college she wants to go to cannot do all the things she needs without getting extra help.

Now you need to plan how you can back up your point of view with evidence. The SEND Tribunal will decide your appeal on the evidence that you and the LA put before it so it is vital that you produce the best possible evidence.

3.5 Evidence about difficulties

Begin by looking at the evidence the LA used to make its decision. This is likely to include documentation from the early years provider, school or post-16 institution, such as school/college reports; the records of any assessments done by the early years provider, school or post-16 institution, what they then did and what effect that had; any advice from the LA's educational psychologist or other professionals who may have been involved. If the decision seems at odds with the evidence you may need to look no further than the documentation and reports of the LA's own professionals.

If the evidence supports the LA's decision you will have to look elsewhere for evidence to back up your case. Reports from professionals such as educational psychologists can be extremely important to your case but they can also be very expensive.

If you are eligible for Legal Help (part of Legal Aid) because you are on benefits or on a low income, it may be possible for a solicitor to arrange free reports from professionals. (See section 2.7: Legal Help).

Other sources of written evidence may be available from:

- Teachers: ask them to be precise and to quantify exactly what is needed for your child.
- Health service, e.g. speech therapist, paediatrician, clinical psychologist or occupational therapist may write a report. Get your GP to refer you.
- Others involved with you or your child, e.g. social workers, youth workers, careers advisers.
- Information from voluntary groups relating to the learning difficulty/disability concerned.
- References to relevant research and findings.
- Extracts from books, magazines etc.
- School reports, including results of national tests and assessments.
- The school/college's own assessments and review reports.
- Home-school diaries.
- Your own evidence: for example, has a younger brother or sister overtaken your child? Is he or she anxious about going to school? Do you get bed-wetting, particularly in term time?
- Evidence from your child or the young person, written via a third party when necessary.
- Your or your child's school/college work if this demonstrates a point you want to make, such as the limited progress they have made, or a particular difficulty which is in dispute.
- If there has been little progress over a period of time, it sometimes makes it clearer if you can show this visually by a chart or graph. You may also be able to show uneven achievement between one particular subject or skill and another.
- Information from the school/college record. You have a legal right to a copy of this. Put your request in writing to the chair of the governing body at the school or the equivalent for a college. (See **model letter 2** below.) You may be charged for photocopying. The record includes school/college reports, attendance record and details of any exclusions. If behaviour is a difficulty, the disciplinary record may help you show whether this is getting worse, whether for instance the school and your child needs more help to manage it and whether there is a pattern.

The Code says that LAs should look for evidence of a child's progress when deciding whether to make an EHC needs assessment. The suggestions listed above may help you to demonstrate that your child's progress is slow or uneven, or that they have complex needs involving more than one difficulty. The Code says your child's attainment is a factor, but this must be considered in the context of their peers' attainment, their progress over time and what is expected of your child's performance. If you can show, for example, that their performance in some areas is much lower than other areas or below what their general intelligence indicates is possible, then this should be a factor in deciding whether to assess.

Model letter 2

Dear Chair of the Governing Body (*your school will provide the name and address or send it c/o the school*)

(*Give your child's name and Year Group here*)

I am writing to ask for a copy of my child's school record which I believe will be helpful for my appeal to the Special Educational Needs and Disability Tribunal against the local authority's refusal to assess my child's special educational needs.

I understand I am entitled to these within 15 school days under the Pupil Information Regulations and that you may charge the cost of photocopying.

Thank you for your attention to this.

Yours faithfully,

(*Your name*)

3.6 Evidence about what cannot be provided without an EHC plan

In some cases it will be enough to provide evidence of problems in learning or to show educators' or trainers' difficulty in understanding the problems and the help they need.

However, in most appeals against a refusal to assess, you will need the early years provider, school or post-16 institution to provide evidence of what help they have provided and be able to show why this may not be enough in the future. The Code mentions three potential triggers for assessment where resources are critical:

- Lack of progress: the Code at paragraph 9.16 says: "*In considering whether an EHC needs assessment is necessary, the local authority should consider whether there is evidence that despite the early years provider, school or post-16 institution having taken relevant and purposeful action to identify, assess and meet the*

special educational needs of the child or young person, the child or young person has not made expected progress.”

- Progress but only with unsustainable support: if the school or other setting has provided a lot of support which has ensured progress, but will not be able to continue doing so without an EHC plan, the Code rightly says this is also a trigger for assessment (paragraph 9.14).
- Transfer to a college or other post-16 provider which may not have the SEN resources a school has.

As well as the help provided by the school/institution, you will need to know what outside help the early years provider, school or post-16 institution can call in, for example the LA's educational psychologist, their behaviour support team, health service speech therapists, and specialist teachers.

You will also need details about their special needs budget and the number of children and young people it covers. The LA may tell you that schools should have up to £10,000 available for each child or young person with SEN (this is made up of the cost of the place plus £6000 for SEN). However, this amount is a notional one, not based on an assessment of current pupils' needs and the real cost of providing for them. The actual amount of money available depends on what the school is already committed to spending, so you need to find out how much money it actually gets and how they plan to spend it to see what they can and cannot do. Colleges are funded differently. You may not be able to find all this information easily.

Ask someone from the early years provider, school or post-16 institution to tell you about it. You could point out to them that in this kind of appeal you are likely to be unsuccessful without this information. It may help to put your request in writing using model letter 3.

Model letter 3

Dear Head teacher/Principal (or Special Educational Needs Co-ordinator)

As you may know, the local authority has refused my request for an EHC needs assessment of my child (*give name and year group*).

I am appealing against that decision and need information about the school's special educational needs provision to put my case.

Could you tell me:

1. The SEN budget for the current academic year.
2. The number of children/young people this covers.
3. The number of children/young people with SEN but without EHC plans and the number with EHC plans.

Could you also describe the typical help which is given for children/young people with my child's difficulties and whether this is the maximum available? I very much appreciate the time and trouble you will take to provide this information which I need in writing. I have been advised that the SEND Tribunal will find it hard to decide the case without full details of school provision.

Yours sincerely

(Your name)

It may also be helpful to use **model letter 1** (above) to ask the LA for details of how much funding it delegates to schools and what help it expects schools to make. (See section 0: What if the school/institution could do more?) If there appears to be a mismatch between what the school is saying it can do and the LA expects it to do, this may help your case.

4 The legislation

This includes key sections of the Act that relate to the LA's responsibilities to carry out EHC needs assessments (sections 22, 36 and 37) and a parent's and young person's right to appeal against refusal to assess (section 51).

4.1 Identification and assessment of children and young people with special educational needs

22 Identifying children and young people with special educational needs and disabilities

A local authority in England must exercise its functions with a view to securing that it identifies—

- (a) all the children and young people in its area who have or may have special educational needs, and*
- (b) all the children and young people in its area who have a disability.*

...

36 Assessment of education, health and care needs

(1) A request for a local authority in England to secure an EHC needs assessment for a child or young person may be made to the authority by the

child's parent, the young person or a person acting on behalf of a school or post-16 institution.

(2) An "EHC needs assessment" is an assessment of the educational, health care and social care needs of a child or young person.

(3) When a request is made to a local authority under subsection (1), or a local authority otherwise becomes responsible for a child or young person, the authority must determine whether it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

(4) In making a determination under subsection (3), the local authority must consult the child's parent or the young person.

(5) Where the local authority determines that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan it must notify the child's parent or the young person—

(a) of the reasons for that determination, and

(b) that accordingly it has decided not to secure an EHC needs assessment for the child or young person.

(6) Subsection (7) applies where—

(a) no EHC plan is maintained for the child or young person,

(b) the child or young person has not been assessed under this section or section 71 during the previous six months, and

(c) the local authority determines that it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

(7) The authority must notify the child's parent or the young person— (a) that it is considering securing an EHC needs assessment for the child or young person, and

(b) that the parent or young person has the right to—

(i) express views to the authority (orally or in writing), and

(ii) submit evidence to the authority.

(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.*
- (9) After an EHC needs assessment has been carried out, the local authority must notify the child's parent or the young person of—*
 - (a) the outcome of the assessment,*
 - (b) whether it proposes to secure that an EHC plan is prepared for the child or young person, and*
 - (c) the reasons for that decision.*
- (10) In making a determination or forming an opinion for the purposes of this section in relation to a young person aged over 18, a local authority must consider whether he or she requires additional time, in comparison to the majority of others of the same age who do not have special educational needs, to complete his or her education or training.*
- (11) Regulations may make provision about EHC needs assessments, in particular—*
 - (a) about requests under subsection (1);*
 - (b) imposing time limits in relation to consultation under subsection (4);*
 - (c) about giving notice;*
 - (d) about expressing views and submitting evidence under subsection (7);*
 - (e) about how assessments are to be conducted;*
 - (f) about advice to be obtained in connection with an assessment;*
 - (g) about combining an EHC needs assessment with other assessments;*
 - (h) about the use for the purposes of an EHC needs assessment of information obtained as a result of other assessments;*
 - (i) about the use of information obtained as a result of an EHC needs assessment, including the use of that information for the purposes of other assessments;*
 - (j) about the provision of information, advice and support in connection with an EHC needs assessment.*

37 Education, health and care plans

- (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.*
- (2) For the purposes of this Part, an EHC plan is a plan specifying—*
 - (a) the child's or young person's special educational needs;*
 - (b) the outcomes sought for him or her;*
 - (c) the special educational provision required by him or her;*
 - (d) any health care provision reasonably required by the learning difficulties and disabilities which result in him or her having special educational needs;*
 - (e) in the case of a child or a young person aged under 18, any social care provision which must be made for him or her by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970 (as it applies by virtue of section 28A of that Act);*
 - (f) any social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs, to the extent that the provision is not already specified in the plan under paragraph (e).*
- (3) An EHC plan may also specify other health care and social care provision reasonably required by the child or young person.*
- (4) Regulations may make provision about the preparation, content, maintenance, amendment and disclosure of EHC plans.*
- (5) Regulations under subsection (4) about amendments of EHC plans must include provision applying section 33 (mainstream education for children and young people with EHC plans) to a case where an EHC plan is to be amended under those regulations.*

...

51 Appeals

- (1) A child's parent or a young person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 55 (mediation).*

(2) *The matters are—*

(a) *a decision of a local authority not to secure an EHC needs assessment for the child or young person;*

...

4.2 What are special educational needs and provision?

The Act says that LAs must identify and secure an EHC needs assessment of those children and young people in their area who may have special educational needs and who may need an EHC plan.

Section 37 of the Act (above) says that an LA must secure an EHC plan when “*it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan*”.

The legal definitions of special educational needs and provision are provided below. Note that when children or young people need health provision for their education or training, the need is a special educational need and the provision counts as special educational provision. Speech therapy will nearly always be special educational provision, not health provision, and occupational and physiotherapy may well also fall into this definition.

The issue of when it is necessary for the LA to secure special educational provision via an EHC plan is dealt with in section 3: Making your case.

20 When a child or young person has special educational needs

(1) *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).*

(4) *A child or young person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home.*

(5) *This section applies for the purposes of this Part.*

21 Special educational provision, health care provision and social care provision

(1) *“Special educational provision”, for a child aged two or more or a young person, means educational or training provision that is additional to, or different from, that made generally for others of the same age in—*

(a) *mainstream schools in England,*

(b) *maintained nursery schools in England,*

(c) *mainstream post-16 institutions in England, or*

(d) *places in England at which relevant early years education is provided.*

(2) *“Special educational provision”, for a child aged under two, means educational provision of any kind.*

(3) *“Health care provision” means the provision of health care services as part of the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006.*

(4) *“Social care provision” means the provision made by a local authority in the exercise of its social services functions.*

(5) *Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision).*

(6) *This section applies for the purposes of this Part.*

4.3 Schools’ and LAs’ obligations to publish SEN information

Schools

Section 69 of the Act

69 SEN information report

- (1) *This section imposes a duty on—*
- (a) *the governing bodies of maintained schools and maintained nursery schools in England, and*
 - (b) *the proprietors of Academy schools.*
- (2) *A governing body or proprietor must prepare a report containing SEN information.*
- (3) *“SEN information” is—*
- (a) *such information as may be prescribed about the implementation of the governing body’s or proprietor’s policy for pupils at the school with special educational needs;*
 - (b) *information as to—*
 - (i) *the arrangements for the admission of disabled persons as pupils at the school;*
 - (ii) *the steps taken to prevent disabled pupils from being treated less favourably than other pupils;*
 - (iii) *the facilities provided to assist access to the school by disabled pupils;*
 - (iv) *the plan prepared by the governing body or proprietor under paragraph 3 of Schedule 10 to the Equality Act 2010 (accessibility plan).*
- (4) *In this section—*
- “disabled person” means a person who is a disabled person for the purposes of the Equality Act 2010;*
- “disabled pupil” includes a disabled person who may be admitted to a school as a pupil.*

Regulation 51 of the Special Educational Needs and Disability Regulations 2014:

Prescribed information that must be included in SEN information report

51. For the purpose of section 69(3)(a) of the Act the SEN information which the governing body or proprietor of every maintained school, maintained nursery school and Academy school (other than a special school that is established in a

hospital) must include in a report containing SEN information is set out in Schedule 1.

Schedule 1 of the Special Educational Needs and Disability Regulations 2014:

Information to be included in the SEN information report

- 1. The kinds of special educational needs for which provision is made at the school.*
- 2. Information, in relation to mainstream schools and maintained nursery schools, about the school's policies for the identification and assessment of pupils with special educational needs.*
- 3. Information about the school's policies for making provision for pupils with special educational needs whether or not pupils have EHC Plans, including—*
 - (a) how the school evaluates the effectiveness of its provision for such pupils;*
 - (b) the school's arrangements for assessing and reviewing the progress of pupils with special educational needs;*
 - (c) the school's approach to teaching pupils with special educational needs;*
 - (d) how the school adapts the curriculum and learning environment for pupils with special educational needs;*
 - (e) additional support for learning that is available to pupils with special educational needs;*
 - (f) how the school enables pupils with special educational needs to engage in the activities of the school (including physical activities) together with children who do not have special educational needs; and*
 - (g) support that is available for improving the emotional, mental and social development of pupils with special educational needs.*
- 4. In relation to mainstream schools and maintained nursery schools, the name and contact details of the SEN co-ordinator.*
- 5. Information about the expertise and training of staff in relation to children and young people with special educational needs and about how specialist expertise will be secured.*
- 6. Information about how equipment and facilities to support children and young people with special educational needs will be secured.*

7. *The arrangements for consulting parents of children with special educational needs about, and involving such parents in, the education of their child.*
8. *The arrangements for consulting young people with special educational needs about, and involving them in, their education.*
9. *Any arrangements made by the governing body or the proprietor relating to the treatment of complaints from parents of pupils with special educational needs concerning the provision made at the school.*
10. *How the governing body involves other bodies, including health and social services bodies, local authority support services and voluntary organisations, in meeting the needs of pupils with special educational needs and in supporting the families of such pupils*
11. *The contact details of support services for the parents of pupils with special educational needs, including those for arrangements made in accordance with section 32.*
12. *The school's arrangements for supporting pupils with special educational needs in a transfer between phases of education or in preparation for adulthood and independent living.*
13. *Information on where the local authority's local offer is published.*

Local authorities

Section 30 of the Act

30 Local offer

(1) A local authority in England must publish information about— (a) the provision within subsection (2) it expects to be available in its area at the time of publication for children and young people who have special educational needs or a disability, and

(b) the provision within subsection (2) it expects to be available outside its area at that time for—

(i) children and young people for whom it is responsible, and (ii) children and young people in its area who have a disability.

(2) The provision for children and young people referred to in subsection

(1) is—

- (a) education, health and care provision;*
 - (b) other educational provision;*
 - (c) other training provision;*
 - (d) arrangements for travel to and from schools and post-16 institutions and places at which relevant early years education is provided; (e) provision to assist in preparing children and young people for adulthood and independent living.*
- (3) For the purposes of subsection (2)(e), provision to assist in preparation for adulthood and independent living includes provision relating to—*
- (a) finding employment;*
 - (b) obtaining accommodation;*
 - (c) participation in society.*
- (4) Information required to be published by an authority under this section is to be known as its “local offer”.*
- (5) A local authority must keep its local offer under review and may from time to time revise it.*
- (6) A local authority must from time to time publish—*
- (a) comments about its local offer it has received from or on behalf of—*
 - (i) children and young people with special educational needs, and the parents of children with special educational needs, and*
 - (ii) children and young people who have a disability, and the parents of children who have a disability, and*
 - (b) the authority’s response to those comments (including details of any action the authority intends to take).*
- (7) Comments published under subsection (6)(a) must be published in a form that does not enable the person making them to be identified.*
- (8) Regulations may make provision about—*
- (a) the information to be included in an authority’s local offer;*
 - (b) how an authority’s local offer is to be published;*

- (c) *who is to be consulted by an authority in preparing and reviewing its local offer;*
 - (d) *how an authority is to involve—*
 - (i) *children and young people with special educational needs, and the parents of children with special educational needs, and*
 - (ii) *children and young people who have a disability, and the parents of children who have a disability,*
in the preparation and review of its local offer;
 - (e) *the publication of comments on the local offer, and the local authority's response, under subsection (6) (including circumstances in which comments are not required to be published).*
- (9) *The regulations may in particular require an authority's local offer to include—*
- (a) *information about how to obtain an EHC needs assessment;*
 - (b) *information about other sources of information, advice and support for—*
 - (i) *children and young people with special educational needs and those who care for them, and*
 - (ii) *children and young people who have a disability and those who care for them;*
 - (c) *information about gaining access to provision additional to, or different from, the provision mentioned in subsection (2);*
 - (d) *information about how to make a complaint about provision mentioned in subsection (2).*

Regulation 53 of the Special Educational Needs and Disability Regulations 2014

Information to be included in the local offer

53. *A local authority must include the information in Schedule 2 when it publishes its local offer.*

Schedule 2 of the Special Educational Needs and Disability Regulations 2014

SCHEDULE 2

Information to be published by a local authority in its local offer

1. The special educational provision and training provision which the local authority expects to be available in its area for children and young people in its area who have special educational needs or a disability by—

- (a) providers of relevant early years education;*
- (b) maintained schools, including provision made available in any separate unit;*
- (c) Academies, including provision made available in any separate unit;*
- (d) non-maintained special schools;*
- (e) post-16 institutions;*
- (f) institutions approved under section 41 of the Act;*
- (g) pupil referral units; and*
- (h) persons commissioned by the local authority to support children and young people with special educational needs or a disability.*

2. The special educational provision and training provision the local authority expects to be made outside its area by persons specified in subparagraphs (a) to (g) of paragraph 1 for children and young people in its area with special educational needs or a disability.

3. The information in paragraphs 1 and 2 must include information about—

- (a) the special educational provision and training provision provided for children and young people with special educational needs or a disability by mainstream schools and mainstream post-16 institutions including any support provided in relation to learning or the curriculum;*
- (b) the special educational provision and training provision provided by special schools and special post-16 institutions, and those approved under section 41 of the Act;*
- (c) the special educational provision and training provision secured by the local authority in mainstream schools, mainstream post-16 institutions, pupil referral units and alternative provision Academies for children and young people with special educational needs or a disability; and (d) the arrangements the local authority has for funding children and young people with special educational needs including any agreements about how any of the persons specified in paragraph 1 will use any budget that has been delegated to that person by the local authority.*

4. The arrangements the persons specified in paragraphs 1 and 2 have for—

- (a) identifying the particular special educational needs of children and young people;*
- (b) consulting with parents of children with special educational needs or a disability and with young people with special educational needs or a disability;*
- (c) securing the services, provision and equipment required by children and young people with special educational needs or a disability; and (d) supporting children and young people with special educational needs or a disability in a transfer between phases of education and transfers from one post-16 institution to another, and in preparation for adulthood and independent living.*

5. Information, in relation to the persons specified in paragraphs 1 and 2, about

- (a) their approach to teaching of children and young people with special educational needs;*
- (b) how they adapt the curriculum and the learning environment for children and young people with special educational needs or a disability;*
- (c) the additional learning support available to children and young people with special educational needs;*
- (d) how the progress towards any of the outcomes identified for children and young people with special educational needs will be assessed and reviewed, including information about how those children, their parents and young people will take part in any assessment and review;*
- (e) how the effectiveness of special educational provision and training provision will be assessed and evaluated, including information about how children, their parents and young people will take part in any assessment and evaluation;*
- (f) how facilities that are available can be accessed by children and young people with special educational needs or a disability;*
- (g) what activities (including physical activities) are available for children and young people with special educational needs or a disability in addition to the curriculum;*
- (h) what support is available for children and young people with special educational needs or a disability;*
- (i) how expertise in supporting children and young people with special educational needs or a disability is secured for teaching staff and others working with those children and young people;*

(j) how the emotional, mental and social development of children and young people with special educational needs or a disability will be supported and improved.

6. Where further information about the bodies specified in paragraphs 1 and 2, including the information required by section 69 of the Act, can be obtained.

7. Where the strategy prepared by the local authority under paragraph 1 of Schedule 10 to the Equality Act 2010 can be obtained.

8. Special educational provision and training provision the local authority expects to be made in relation to young people with special educational needs or a disability who have entered into an apprenticeship agreement within the meaning of section 32(1) of the Apprenticeships, Skills, Children and Learning Act 2009.

9. Special educational provision and training provision the local authority expects to be made by providers of training in its area, and outside its area for young people in its area with special educational needs or a disability.

10. Provision available in the local authority's area to assist children and young people with special educational needs or a disability in preparation for adulthood and independent living.

11. Information about support available to young people with special educational needs or a disability receiving higher education, including any disabled student's allowance available under chapter 3 of Part 5 of the Education (Student Support) Regulations 2011.

12. Health care provision for children and young people with special educational needs or a disability that is additional to or different from that which is available to all children and young people in the area, including—

(a) services for relevant early years providers, schools and post-16 institutions to assist them in supporting children and young people with medical conditions, and

(b) arrangements for making those services which are available to all children and young people in the area accessible to children and young people with special educational needs or a disability.

13. Social care provision for children and young people with special educational needs or a disability and their families including—

(a) services provided in accordance with section 17 of the Children Act 1989;

(b) the arrangements for supporting young people when moving from receiving services for children to receiving services for adults;

- (c) *support for young people in planning and obtaining support to assist with independent living;*
- (d) *information and advice services made available in accordance with section 4 of the Care Act 2014^b.*

14. Transport arrangements for children and young people with special educational needs or a disability to get to and from school or post-16 institution, or other institution in which they are receiving special educational provision or training provision including—

- (a) arrangements for specialist transport;*
- (b) arrangements for free or subsidised transport;*
- (c) support available in relation to the cost of transport, whether from the local authority or otherwise.*

15. Sources of information, advice and support in the local authority's area for children and young people with special educational needs or a disability and their families including information—

- (a) provided in accordance with section 32 of the Act;*
- (b) about forums for parents and carers of children and young people with special educational needs or a disability;*
- (c) about support groups for children and young people with special educational needs or a disability and their families;*
- (d) about childcare for children with special educational needs or a disability;*
- (e) about leisure activities for children and young people with special educational needs or a disability and their families;*
- (f) about persons who can provide further support, information and advice for children and young people with special educational needs or a disability and their families.*

16. The procedure for making a complaint about provision mentioned in section 30(2) of the Act.

17. The procedure for making a complaint about any provision or service set out in the local offer.

18. Information about any criteria that must be satisfied before any provision or service set out in the local offer can be provided.

19. *Information about how to request an EHC needs assessment, and the availability of personal budgets.*
20. *Information on where the list of institutions approved under section 41 of the Act is published.*
21. *Arrangements for notifying parents and young people of their right to appeal a decision of the local authority to the SEND Tribunal.*
22. *Arrangements for mediation made in accordance with section 53 or 54 of the Act.*
23. *Arrangements for the resolution of disagreements made in accordance with section 57 of the Act.*

5 Case law

The SEND Tribunal does not expect sophisticated legal arguments or references to case law. However, there are some useful cases which confirm the relevant principles to be applied.

Cambridgeshire County Council v FL-J [2016] UKUT 0225 (AAC)

This case considered the statutory language of s.36 of the Act and the two limbs of the test involved in determining whether a LA needed to carry out the assessment. Judge Jacobs described the exercise which the LA must carry out in this way:

*“At the initial stage, when the authority or the SEND Tribunal is deciding whether an assessment should be secured, two different questions arise. One is a question of present fact: ‘has’ the young person a learning difficulty or disability? The other is a prediction: is it one that ‘calls for’ special educational provision (section 20(1)) or for which such provision ‘may be necessary’ (section 36(3))? Those different expressions are both framed according to the stage of the process... To put it loosely and without intending to rewrite or gloss the language of the legislation, **the issue at the initial stage is a provisional and predictive one**; it is only when an assessment has been made that a definitive decision has to be made.” (emphasis added)*

MC v Somerset County Council (SEN) [2015] UKUT 0461 (AAC)

This case involved a request for an assessment under the Education Act 1996 which contained a slightly different legal test. However, this case remains relevant as it involves consideration of whether a Statement (which have been replaced by EHC plans) is ‘necessary’. The test for carrying out an EHC needs assessment under s. 36(8) of the Act is whether it “*may be necessary*” for provision to be made through an EHC plan.

Judge Ward accepted that it might be ‘necessary’ for there to be an assessment in order to: *“open the door to the issue of a statement and with it the enforceability of rights via s.324(5)”*. The beneficial ‘enforceability’ of a statement or EHC plan could be relevant in a case where a school was not supportive of a parent’s request for assessment.³

In this particular case, the way in which arrangements were made by Somerset CC for pupils with SEN meant that the FTT accepted that there was, in fact, no need for an assessment at the relevant time. They found that there was no additional information about the child’s SEN which would be gained by carrying out an assessment, and (unusually) the particular arrangements by the LA meant that he would not need a statement to access the support he required, as the support provision (including funding for it) had been guaranteed by the LA for the forthcoming academic year. The definition of ‘special educational provision’ within the Act now involves a comparison with mainstream schools and institutions *“in England”* rather than those within the LA’s area, which was the case under the Education Act 1996. This may make it slightly easier to argue for statutory assessments even in those areas where more extensive provision for SEN within schools is ‘the norm’.

Buckinghamshire County Council v HW (SEN) [2013] UKUT 0470 (AAC)

In this case, Judge Jacobs agreed with the reasoning in the earlier case of *NM v London Borough of Lambeth* [2011] UKUT 499 (AAC) and confirmed that it is the statutory test which must be applied, i.e. the test of whether it might be **necessary** for there to be a statement and explained the term thus:

“Necessary sets a standard that is somewhere between indispensable and useful or reasonable. I am not going to define it more precisely. It is a word in general usage and it is that usage that the SEND Tribunal must apply.”

The UT also considered whether or not the First-tier Tribunal had been right to look to the future in this case as the child was about to transfer from primary to secondary. The UT decided that *Wilkin v Goldthorpe and Coventry City Council* [1998] ELR 345 was correct, albeit that the Wilkin case related to a child who was already statemented (rather than being assessed for one), because an analysis of the language alone showed that the same approach was appropriate.

“The statutory test inevitably directs attention to something that will happen after the assessment has been made. The assessment is made for a purpose. That purpose involves identifying provision necessary to meet a child’s needs. The assessment cannot realistically limit itself to the immediate present. When there will be a change of circumstances in the near future, it is impossible to ignore that future”.

³ See also: **Manchester City Council v JW (SEN) [2014] UKUT 0168 (AAC)** at paragraph 30.

This might also be a useful case to use in a situation where a child/young person is due to transfer from school to college in the near future, and you may wish to argue that an EHC plan will be needed in college, where support for SEN can be arranged quite differently from within schools.

6 Further help

Independent Parental Special Education Advice (IPSEA)

Help and advice on all aspects of the law on special educational needs

Visit our website (<https://www.ipsea.org.uk/>) for details on how to contact us.

Education Law Association

For help and advice from a legal educational professional

Phone or fax: 0118 9669866

Email: secretary@educationlawassociation.org.uk

Legal help and representation

Under the legal help scheme, a parent or young person on a low income may be able to get limited free legal help from a solicitor. For a parent or young person preparing for the SEND Tribunal, this could cover a second expert opinion and preparing a written case. There is a legal aid checker at <http://legal-aid-checker.justice.gov.uk/>.

Useful information

Statutory guidance: the code of practice which tells LAs how to carry out their duties with regard to SEN: *Special educational needs and disability code of practice: 0 to 25 years*, Ref. DFE-00205-2013. Download from:

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

Appealing about a refusal to issue an EHC Plan

1. Introduction

This pack has been written to help you take an appeal to the First-tier Tribunal (Special Educational Needs and Disability) (“the **Tribunal**”) against a local authority’s (“**LA’s**”) refusal to issue an Education, Health and Care (“**EHC**”) plan for your child or, if you are a young person, you.

This pack relates to the law in England under the Children and Families Act 2014 (“the **Act**”).

Refusal to assess, or refusal to issue?

It is important to be clear about what stage you are at in the EHC needs assessment and plan process.

The first step to obtaining an EHC plan is to [request an EHC needs assessment](#). Once a formal request has been made (typically by the parent or the school), the LA must decide whether to conduct an assessment and must notify you of their decision within 6 weeks. If they decide not to conduct an assessment, you will have a right of appeal. This is known as a **Refusal to Assess** appeal. For more information on how to appeal against a refusal to assess decision, see our [Refusal to Assess Pack](#).

This pack concerns the situation where the LA has [conducted an EHC needs assessment](#), but then decides not to issue an EHC plan. Again, you will have a right of appeal. This is known as a **Refusal to Issue** appeal.

2. The LA’s decision and the right of appeal

Following an EHC needs assessment, the LA must decide whether it will issue an EHC plan for the child or young person based on the evidence it has gathered.

If the LA decides not to issue an EHC plan, it must notify the parent or young person (referred to below as “you”) as soon as practicable and at the latest within **16 weeks** of the date the request for assessment was made. It must give the reasons for its decision and notify you of your right to appeal this decision to the SEND Tribunal, together with information about time limits, the requirement to consider mediation, and the availability of information, advice and support and disagreement resolution services.

Note the time limits: you must send your appeal form to the Tribunal within two months from the date of the LA’s decision, or one month from obtaining a mediation certificate, whichever is later.

Please see our pages on [appealing to the SEND Tribunal](#) and in particular our [general advice for all appeals](#) for detailed information about the process of bringing an appeal, including:

- [where to get help, including legal aid](#)
- [mediation](#)
- [how to submit an appeal, including time limits and how to fill out the forms](#)
- [the timetable for the appeal process](#)
- [preparing the case for the hearing](#)
- [the hearing and beyond](#)

3. When must the LA issue an EHC Plan?

The legal test is found in section 37(1) of the Act, and it turns on whether an EHC plan is “necessary”:

(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.

For young people over 18, the LA must also consider whether they require additional time, in comparison to the majority of their peers who do not have special educational needs (“SEN”), to complete their education or training (section 36(10) of the Act).

Therefore the LA must decide, on the basis of the evidence from the EHC needs assessment, whether it is necessary for the child or young person to have an EHC plan.

The term “*necessary*” is not defined by the Act and allows for flexibility. The focus is on the simple and practical question of whether an EHC plan is required in order that the child or young person gets the special educational provision (“SEP”) they require. This will depend on the circumstances of the particular case, and may well involve a considerable degree of judgment.

It is sometimes easier to reframe the question in the negative:

Will the child or young person receive the SEP they require without an EHC plan?

If **no**, then an EHC plan **is** necessary.

If **yes**, then an EHC plan **is not** necessary.

4. How do I prove that an EHC Plan is necessary?

The burden of proof is on you to show why it is necessary for the SEP required by the child or young person to be set out in an EHC plan. What the required SEP is, and whether the school or other setting can or will provide it, is usually at the heart of the dispute.

The [SEND Code of Practice](#) sets out different aspects the LA must consider in making its decision:

- Whether the child or young person's SEN were previously fully understood by the school, and whether the SEP already being made was "*well matched*" to those needs (para 9.54). An EHC plan may not be required where the school will now, in the light of the information from the EHC needs assessment, be able to support the child or young person more effectively in future.
- Where the child or young person is not progressing sufficiently, despite well-targeted provision, the LA must consider what further SEP is needed (para 9.55). If the SEP required cannot reasonably be provided from the school's own resources, this suggests that an EHC plan would be necessary.
- If there is no previous information or SEP to consider, e.g. because the child's SEN have only recently been identified, or have changed significantly, or they have only been in their current setting a short time, the LA must consider what new SEP is needed (para 9.56). If the required SEP cannot reasonably be provided from the school's own resources, an EHC plan would be necessary.

However, these examples are not exhaustive, and it is the legal test that prevails.

Under that test, there is a rough and ready resource line to be crossed before an EHC plan is considered to be necessary, which is based on the kinds of provision a mainstream school, nursery or college could make from its own resources and notional SEN budget. If the school or other setting cannot make the SEP that the child or young person requires from within its own resources, then an EHC plan will be necessary.

There are therefore two key areas to focus on when making your case:

a. identifying the SEP required by the child or young person

The starting point should be the information and advice gathered by the LA during the [assessment process](#). This must cover all of the child or young person's SEN and the SEP they require, and the outcomes intended to be achieved.

The Code of Practice says (at paragraph 9.51) that the evidence and advice must be "*clear, accessible and specific and provide advice about outcomes relevant for the child or young person's age and phase of education and strategies for their achievement.*"

A useful technique is to go through the assessment evidence with two different coloured highlighter pens. Highlight all the identified SEN in one colour, and the SEP in another. Is each identified SEN matched with appropriate SEP? Is that SEP clear and specific? Is it outcomes-focused? Did the LA in fact conduct the assessment properly and obtain all of the legally required advice and information? If not, the LA should be asked to go back to the relevant professional(s) and ask them to provide the missing information. If they won't, you can ask the Tribunal to order them to do so, using the [Request for Change](#) form on the Tribunal's website.

You may also want to submit evidence of your own, in order to show that the assessment evidence is wrong or incomplete. For example, does it fail to address some of your child's SEN? Does it downplay the severity or effects of their SEN? Does it under-estimate the SEP that will be required? Does the proposed SEP reflect what is available locally, rather than what the child/young person actually needs?

This evidence could include independent reports from professionals such as educational psychologists or speech therapists, evidence from teachers or other people who know your

child well, school reports, home-school diaries, or examples of your child's work over time. See our [evidence for contents appeals](#) page for more detailed information on potential sources of evidence. Section 3 of the [Refusal to Assess Pack](#) will also be helpful.

Independent reports can be helpful, but are not essential. They can be very expensive, so do check whether you are eligible for [legal aid or help from other organisations](#).

LAs are legally required to consider all information and reports submitted by parents as part of the assessment process, and cannot simply disregard them (as sometimes happens). The Tribunal will take into account *all* the evidence from both sides when determining the appeal.

b. identifying whether the SEP can be provided by the school or other setting without an EHC plan

Once you have identified the SEP that your child or young person needs, you must establish whether the school or other setting can (or will) in fact provide this SEP without an EHC plan.

Our [Model Letter 19](#) can be used to ask the school for detailed information about its SEN budget and provision and the number of children/young people it covers. You should also look on the school's website for their SEN Information Report, which must set out the type and extent of SEP that they can provide.

You will also need evidence of the support provided for the child or young person up to this point. The SEND Code of Practice says that [SEN Support](#) should be provided in schools and other settings through a four-part "cycle of action": assess, plan, do and review. See our [FAQs](#) for details of what this should look like in early years settings, schools and post-16 settings.

In order to show whether the school or other setting has done this properly up to now, you will need evidence in the form of records of the assessments carried out in school and the SEP that has been put in place. Individual education plans, provision maps or similar documents should be available, showing that the school has accurately identified the child or young person's SEN, put appropriate SEP in place, and reviewed it regularly. This information should be part of the child or young person's school records, which you are entitled to access (see [Model Letter 18](#)).

If you can show that the school or other setting has used its best endeavours to deliver appropriate SEP, and the child or young person is still not making expected progress, this will be strong evidence that an EHC plan is necessary.

LAs are required to publish a [Local Offer](#) setting out (amongst other things) what help it expects schools and other settings to provide for children with SEN - although there is no guarantee that this will actually be available. You can also ask the LA to provide further details of the help that they expect schools to provide (using [Model Letter 17](#)). It can help your case if there is a discrepancy between what the LA says it expects and what the school or other setting says it can actually do.

Once you have gathered this evidence, you will be able to consider which of the following scenarios is relevant in meeting this second part of the test:

i. School willing to provide SEP, but does not have resources

It will help considerably if the school agrees with you that an EHC plan is necessary and is willing to provide details of the extent to which they can or cannot meet your child's needs. As well as providing written information, they may be willing to allow someone with knowledge of how their SEP is organised and resourced to attend the hearing as a witness (e.g. the SENCO or head teacher).

ii. School able to provide SEP, but not willing to do so

Cases like this can be challenging, but the Tribunal will look at the reality of the situation. You would need to produce evidence to show that even though a school could in theory make the required provision, this is unlikely to happen in practice unless an EHC plan is issued.

iii. School is meeting needs, but only by going above and beyond what could normally be expected

An EHC plan may be required if your child's needs are being met, but only because the current school is putting in a lot of extra support which is not sustainable in the long term, and/or which other mainstream schools might not be able or willing to replicate.

The provision required by the child or young person should be compared to that which is available in mainstream schools in England generally – not just in the LA's area or in the individual school concerned.

5. Some common issues

What if the school hasn't spent £6,000 on the child or young person?

LAs sometimes argue that an EHC plan is not necessary because the school can spend more on the child or young person. Mainstream maintained schools and academies receive delegated funding to support pupils with SEN (often referred to as "additional support funding" or the "notional SEN budget"), and must usually demonstrate that they have spent £6,000 on a particular pupil before they can ask the LA for more funds. Further education colleges are funded in the same manner.

However, the £6,000 figure is not a fixed threshold that must be passed before an EHC plan can be issued, and it does not form part of the legal test in s.37(1) of the Act. Detailed arguments about local school funding arrangements should not be necessary as part of a refusal to issue appeal. The question remains whether you can show that unless the required SEP is provided via an EHC plan, it is not in fact going to be made.

Furthermore, SEP is not always about cost. For example, it might be that an EHC plan is necessary because a child needs a different environment or a type of specialist input that a mainstream setting cannot simply purchase.

What if the LA says that the school can access external specialists?

Schools and other settings can normally access a certain amount of external advice and support for SEN pupils without an EHC plan. This could include the LA's educational psychologists, behaviour support team, autism advice service, NHS speech and occupational therapists, and specialist teachers. However, if the child needs a high level of ongoing support from these services, or if the school has to go through some kind of application process which may or may not be successful, then it can be argued that this is SEP that is not ordinarily available from within the school's own resources, or that it's unlikely to be delivered unless an EHC plan is issued.

What if my child is about to transfer to a new phase of education (e.g. nursery to primary school, primary to secondary, or secondary to further education)?

In such cases the LA should be looking ahead to what will happen after the transfer, and cannot focus only on the current situation. It may be that the child's needs are being met in the current setting, but that an EHC plan will be necessary in the next phase of their education.

What if my LA says that their policy is only to issue EHC plans for children who meet certain criteria?

Local policy does not trump the law, and the Tribunal will only apply the legal test in s.37. Any stricter criteria are unlawful.

What if a child or young person is incapable of achieving qualifications, progressing to employment or making significant progress?

The courts have been clear that these are not essential elements of education, and a child or young person of any age (up to 25) may need an EHC plan even in circumstances where they are functioning at a very low level and their future achievements are likely to be small.

What if the LA issues a non-statutory document which looks like an EHC plan, but isn't?

Sometimes the LA concludes an EHC needs assessment by refusing to issue an EHC plan and issuing a "[non-statutory EHC plan](#)" instead. This might be called something like a "My Plan", "Resource Plan". "[Name of LA] Plan" or "Person Centred Plan". These documents purport to set out the child or young person's SEN and the SEP they require, but have no legal force. This is still a case of refusal to issue an EHC plan, and you will have the same right to appeal. The document can sometimes be useful in the appeal as it sets out the base line of SEP which the LA admits is required.

What if my child needs health and/or social care provision as well?

For a trial period (currently running until August 2021), the Tribunal is able to make non-binding recommendations in respect of health and social care, so long as there is also an educational issue at stake. This is referred to as [the National Trial](#).

In refusal to issue appeals, the Tribunal would be able to *order* the LA to issue an EHC plan and to *recommend* that it should include health and/or social care provision, whether generally or of a particular kind. This may be useful if you have struggled to get the NHS

or social services to give any meaningful input to the EHC needs assessment process so far, and they would need to give a very good reason for disregarding the Tribunal's recommendation. It is likely to be particularly useful for those seeking a residential placement, and for young people who may start to require greater social care support as they move towards the end of full-time education.

6. Outcomes of an appeal against a refusal to issue an EHC Plan

If you win your appeal, the Tribunal will order the LA to issue an EHC plan. However, it cannot (at this stage) tell the LA what the EHC plan should say, or which school should be named in it.

The LA must produce a draft EHC plan within 5 weeks and consult with you as to what it says. It must then issue the final EHC plan within 11 weeks. More information on what to do when you receive the draft EHC plan may be found [here](#).

If you are unhappy with the EHC plan once it is issued, you will need to bring a further [appeal against its contents](#).

If you lose your appeal, the LA will not have to issue an EHC plan, but hopefully the school or other setting will be able to use the additional information and advice obtained during the assessment and appeal process to support your child more effectively in the future.

You should keep careful records in the coming months of the support that your child receives, whether the school or other setting is following the advice that was obtained in the assessment, whether your child is making expected progress, and whether they are experiencing difficulties.

If you feel that your child's SEN are still not being met properly, you may wish to start the process again and make a fresh [request for assessment](#), using your records as supporting evidence. You will need to wait six months from the previous assessment before making a new request.

Appealing the school named in an EHC plan

At this time of year IPSEA gets many calls from parents who have just received the amended education, health and care (“**EHC**”) plan naming the secondary school their child will attend in September. If you are unhappy with the school named in your child's amended plan you can appeal to the First-tier Tribunal (Special Educational Needs and Disability) (the “**SEND Tribunal**”). This fact sheet explains:

- Which schools or colleges parents or young people have a right to request, and the reasons a local authority (“**LA**”) is allowed to refuse
- The right to a mainstream setting
- How to request an independent placement
- Why you should also consider appealing Sections B and F of the EHC plan
- How to submit your appeal, and what evidence you should provide to the Tribunal in support of your appeal.

1. Schools or colleges you have a right to request

A parent or young person has a right to request any of the following types of school or college:

- A maintained school or nursery (mainstream or special)
- An Academy (mainstream or special)
- An institution in the Further Education sector
- A non-maintained special school
- A section 41 school (these are independent schools which have ‘opted in’ to be able to be requested by parents – you can find a list of section 41 schools [here](#)).

These are listed in section 38(3) of the Children and Families Act (“**CAFA**”) 2014.

If you are not sure what type of school you’re asking for, check on the government website ‘[Get Information About Schools](#)’.

The only reason the local authority can refuse the request is if:

- The setting is unsuitable for the age, ability, aptitude or special educational needs (“SEN”) of the child or young person; or
- The attendance of the child or young person would be incompatible with the provision of efficient education for others; or
- The attendance of the child or young person would be incompatible with the efficient use of resources.

This is set out in section 39(4) CAFA 2014. The LA has to prove that at least one of these conditions applies in order to dislodge the parent or young person’s preference.

If the LA says that the school you have asked for is not suitable for your child you will need to:

- gather evidence about the type of children who **are** admitted by the school you want. Look at the OFSTED report and prospectus of the school.
- look at the evidence that you have about your child's needs and, if necessary, consider seeking evidence from elsewhere.

If the LA says that the attendance of your child at the school you want will be incompatible with the provision of efficient education for the other children in your child's class, you will need:

- evidence of exactly what the incompatibility will be - the 'incompatibility' has to be a real concrete thing that stops the other children being educated, for instance a behavioural problem that can't be dealt with and which is constantly interfering with others' learning. It's not something trivial or avoidable. If your child has a behavioural problem, is it still a problem if he or she gets the right support (see how to improve section F below)?
- Often this argument is used where the school is ‘full’. Find out if the school is over-subscribed, if so by how many children? Has the school exceeded the stated number of children in the past? Is there any flexibility in terms of which class your child would go into? Exactly how many adults and children will be in that class? There is no definition in law of what it means for a school to be ‘full’. LAs are able to name schools which say they are ‘full’ in EHC plans and must do so unless they are able to prove the child’s attendance is incompatible with the efficient education of others. In order to refuse to name a school, the LA has to show that because of the high numbers of pupils in the school, the child’s needs won’t be met, or that other children’s needs would not be met, or that there would be an inefficient use of resources (for example, as a result of them having to appoint another teacher or build another classroom).

If the LA says the attendance of your child at the school you want would be incompatible with the efficient use of resources, you will need:

- exact details of the costs the LA say they will incur at the school of your choice, including transport.
- exact details of the cost of a place at the school the LA have named, including transport and any external support (such as therapists coming into the school). Often LAs say it will not cost them anything to send a child to a particular school but investigations can prove otherwise.

2. The right to a mainstream education

If a parent or a young person wants a mainstream school or college named in the EHC plan, there is another part of the law they can rely on as well. Section 33 CAFA 2014 says that a child or young person with an EHC plan **must** be educated in a mainstream setting unless:

1. it is against the wishes of the child's parent or the young person; or
2. it is incompatible with the provision of efficient education for others **and** the LA *shows* that there are no reasonable steps that it could take to prevent the incompatibility.

Even if the LA successfully argued that a mainstream school was unsuitable for the ability, aptitude or SEN of the child (one of the lawful reasons for refusing a school, detailed above under 'Requesting a nursery, school or college'), if they wanted to name a special school against the parents' or young person's wishes they would **also** have to show that it was incompatible with the provision of efficient education for others.

Note, however, that this is a right to *mainstream education* but not necessarily a right to a particular mainstream school.

3. Asking for an independent school or college

Parents and young people do not have a **right** to request an independent school in the same way that they can request the settings listed above, set out in section 38(3) CAFA 2014. However, this does not mean that they cannot **ask for and argue for** a place at an independent setting which is not on the above list.

Where parents are making representations for an independent setting, the LA must have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure (section 9 Education Act 1996). If a young person is requesting an independent school or college, the LA should consider this as part of their duty to consider the young person's views, wishes and feelings (section 19 CAFA 2014).

The difference is this: when a parent requests a section 38(3) school or college, the LA must comply with the request unless the limited exceptions outlined above apply. If the LA refuses to name the parents' choice, the onus is on the LA to prove why it is not possible.

However, when a parent appeals for an independent setting to be named in an EHC plan, the onus is on them to prove that none of the schools the LA is offering can meet the child's needs, **or** that the cost of the placement will not constitute unreasonable public expenditure.

Public expenditure includes all the costs to the public purse of the placement not just those incurred by the LA education budget. This can include social care costs, health costs and any other costs incurred by any public body.

If the parent or young person cannot show this, the Tribunal will not order an independent school to be named. It does not matter that the independent setting proposed is an excellent school and/or better suited to the child needs than the school the LA has in mind. LAs, and Tribunals acting in the LA's place on an appeal, are not bound to offer a child 'the best' provision to meet their needs – only what is necessary to meet their needs.

In practice, the most important point to prove is **not** that the independent setting is better than the LA's proposed school, but that the school offered by the LA cannot meet the child or young person's needs.

Where a parent or young person is appealing for an independent setting, they will generally need evidence from a professional as to why the independent setting is the only school which can meet the child or young person's needs.

Additionally, there must be an offer of a place from the independent setting. Unlike the section 38(3) schools listed above, an LA cannot order an independent school to accept a child or young person.

It is always worth checking whether the independent setting is in fact a section 41 school or a non-maintained special school – if it is, it comes within the list in section 38(3), and so then the burden shifts to the LA to show that it is **not** the appropriate

school to name in the EHC plan. If you are not sure what type of school you're asking for, check on the government website ['Get Information About Schools'](#).

4. Consider including Sections B and F in your appeal!

In most cases it will be important to appeal against sections B and F of your child's amended EHC plan, as well as section I. This is because the school named in section I of a plan should be a logical conclusion to what sections B and F say.

Section B of a plan should fully describe your child's difficulties and section F should specify the provision he or she needs.

It might help to illustrate this with an example:

Jack is a child with a diagnosis of Asperger's syndrome. In addition he has balance problems as a result of mild hemiplegia. He is a vulnerable child both emotionally and physically. His parents believe he needs to attend the smallest mainstream secondary school in the area which has a good track record of supporting children with SEN and where the support he receives from an LSA would be provided by only one or two people. The school has a 'safe haven' within the SEN department that children can go to during break time if they don't feel they can cope with the main playground. This school is all on one level so Jack will not be put in danger by using stairs along with hundreds of other students between lessons.

The LA, however, have named the mainstream secondary school that is nearest to Jack's home. This happens to be the biggest school and the way they support students with SEN is very different. For one thing they have subject based LSAs which means Jack will have to cope with being supported by as many as 8 different people. This school does not have an area that students can go to at break. This school is on 3 levels and Jack will have to move between classes on all floors.

In this situation Jack's parents need to look at his plan in the following way:

Section B needs to fully describe Jack's physical and emotional vulnerability. If it does not his parents need to look at the evidence that exists and draw out comments that will help illustrate these difficulties. They need to appeal against this part of the plan, arguing for amendments that make it more accurate

Section F needs to fully describe the provision and environment that Jack needs because of his difficulties. The plan should specify that the school Jack attends

is able to offer support from a limited number of adults. It should state that the school should be on one level. It should state that the school has a safe area that can be used by students at break time. If section F of the plan does not specify these things, the parents should appeal against it, arguing that it be amended accordingly. In order to justify amendments like this the parents will have to look for comments and recommendations in the reports they already have **and** consider asking professionals to write reports to that effect.

If sections B and F do not accurately set out Jack's needs and the provision required to meet those needs, the Tribunal may conclude that the LA's choice of school is suitable. It is important to ensure the EHC plan is an accurate reflection of the child or young person's needs, because the Tribunal will choose the school they consider can meet the needs as set out in the EHC plan.

See IPSEA's EHC plan checklist [on our website](#) for further detail on what the law says sections B and F should contain.

5. Submitting your appeal

The first thing to make a note of is the deadline for making an appeal. You must send an appeal form to the Tribunal within **two months** of the final amended EHC plan, or **one month** from the date you obtain a mediation certificate, whichever is the later.

Mark any deadlines on your calendar and in your diary. (If the two months/one month ends in August, then you have until the first working day in September to get the form to the Tribunal.)

You should have been sent a letter from the local authority ("LA") when they issued you with the final amended EHC plan. This letter should contain the following information on your rights of appeal:

- (a) your right to appeal that decision;
- (b) the time limits for doing so;
- (c) information about mediation;
- (d) the availability of—
 - (i) disagreement resolution services; and
 - (ii) information and advice about matters relating to the special educational needs of children and young people.

The Tribunal may well extend the deadline if all this information was not provided and the deadline has passed.

How do I register an appeal?

You will need to fill in an appeal form, which you can obtain from the [Tribunal's website](#). Make sure you are using the right form depending on whether the appeal or claim concerns a child or a young person. We strongly recommend you read the booklet about 'How to appeal' which is also available on the site.

You will need to fill out various forms and send in supporting evidence to the Tribunal, along with a copy of the current EHC plan. **Remember to keep copies** of all of your paperwork (letters, reports etc.), so you have a clear record of everything you've sent.

You can submit your appeal either by email or by post. If you send it by post, we recommend that you send it by recorded delivery.

6. Evidence to support your appeal

Where a parent or young person is requesting amendments to an EHC plan, they will need to provide evidence to support the changes they want to be made.

We have set out below evidence which you may wish to submit in support of your appeal. You should send as much evidence as you can at the time you register your appeal, but don't worry if you haven't got it all together by that point – you can submit further evidence after you've registered your appeal.

Professional reports

Key evidence about the child or young person's SEN and the provision required to meet that SEN will usually be found in reports from professionals. Useful sources of expert opinion include:

- The health service: if the child or young person has been seen recently by a specialist or is receiving help from a health professional such as a speech and language therapist;
- Evidence from the child or young person's current school or other institution;
- Privately obtained reports from independent professionals, such as an educational psychologist, occupational therapist or speech and language

therapist. The relevant professional organisation (such as the British Psychological Society for educational psychologists) publishes names of members who can provide a private assessment. If the professional specialises in the difficulties experienced by the child/young person their views will have more weight. Private reports can be very expensive, so you may wish to consider:

- If you qualify for Legal Aid, this could cover the cost of an independent report – you can [check if you can get legal aid online](#);
- Voluntary organisations that specialise in a particular disability may be able to provide an assessment at a modest cost.

If there was a recent EHC needs assessment (including on transition from a Statement to an EHC plan), the LA should have sought information and advice from a range of professionals, including an educational psychologist – see the section on [what happens in an EHC needs assessment](#) for more information. If the LA should have obtained an up-to-date report from a particular professional and failed to do so, you should ask them to do this. If they refuse you can ask the Tribunal to order that they obtain the report needed – you can do this using the Request for Changes form on the Tribunal's website.

Other evidence about needs and provision

As well as professional reports, the following can be useful sources of written evidence:

- Written statements from those involved with the child or young person. This can be particularly useful if they cannot attend as a witness. For example:
 - Evidence from teachers;
 - Evidence from someone who knows the child or young person from outside school, such as a worker at a youth club or a carer;
 - Views and experiences of the parent – they will be the person who knows their child best, and what they have to say is evidence. Although the parent will be there on the day of the hearing it may be sensible to put in a witness statement explaining their perspective to ensure they get all their points across.
- Views of the child/young person, written by themselves if they are able to do so or via a third party.
- Home–school diaries.
- Video/audio evidence (this should be short and to the point; video evidence more than 10 minutes long is highly unlikely to be watched in full). It would be

best to contact the Tribunal to find out how to submit your evidence, and you should send with it an explanation of who made the recording and how long it is, the nature of the evidence, the identity of any witness recorded, and a statement of the facts the evidence seeks to establish.

- Published information from voluntary groups relating to the child's learning difficulty, or references to relevant research and findings – although beware of relying too much on secondary evidence. The best evidence is going to be primary evidence about the child/young person.
- Reports from annual reviews.
- Examples of the child or young person's work over time.

The key point is to think about the changes you want made to the EHC plan, and work out what evidence you need to show that those changes are necessary.

Evidence about the school or other institution

You should include relevant information about the school or institution you want. This should include its most recent Ofsted report, its prospectus, details of the costs of the placement, and any reports or assessments about the child or young person which the school or other institution has produced. You can refer to this evidence to support your arguments that this setting can support the child or young person's needs.

In the case of a school which is wholly independent, you will need to include the consent of the school in order to ask the Tribunal to name it in the EHC plan. This should be a letter from the school confirming that they have offered the child or young person a place.

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Name and description of organisation	Who can access the support	Support provided on	Phone line	Email	Website	Coronavirus specific information
ACE - Provides independent advice for parents/carers of children aged 5-16 in state schools in England. We aim to help parents and carers understand an increasingly complex education system so that they can help their children to achieve the best possible outcomes.	Parents & professionals	Education	0300 0115 142: Monday to Wednesday 10am-1pm (term-time only) Check website for opening hours	enquiries@ace-ed.org.uk	www.ace-ed.org.uk	
Contact – Provides advice and information to families with disabled children across the UK to enable them get the right support. Brings families	Parents and carers of children and young people 0 to 25 in the UK	Education, health and social care	0808 808 3555: Monday to Friday, 9:30am-5pm Press 1 for education issues	helpline@contact.org.uk	www.contact.org.uk	Everyone at Contact is working from home, some teams who were delivering face-to-face workshops have begun doing these online. Helpline hours remain the same, however the helpline currently opens

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together to support each other, and helps families to campaign, volunteer, and fundraise.			Press 2 for anything else			at 10:15 on Tuesday to accommodate a weekly team meeting. Contact have a COVID-19 page on their website, which is regularly updated and are continually looking for things that would help families. Currently are looking to develop webinars.
Down's Syndrome Association - The aim of the DSA is to help people with Down's syndrome to live full and rewarding lives.	Parents , professionals, members of the public	Education, health and social care	0333 1212 300: Monday to Friday 10am-4pm	info@downs-syndrome.org.uk	www.downs-syndrome.org.uk	After Easter will be launching webinars and their Speech and Language Therapist will be launching webinars too. Recently hired a participation officer to promote the voice of those with DS. Online services – consultancy and training being offered. Updating website daily, today will be updating on health concerning parents not seeking medical advice.
Information, Advice and Support Services - IAS Services have a duty to provide information, advice and support to	Parents, children & young people	Education, health and social care	Check local service details	Check local service details	www.iassnetwork.org.uk/find-your-ias/	Some services have severely reduced capacity, others have been redeployed, others working from home. All in different boats, biggest challenge has been to

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disabled children and young people, and those with SEN, and their parents. They are statutory services and are free, impartial and confidential.						support all services in the work they are doing and get guidance out as soon as possible.
IPSEA - Independent Provider of Special Education Advice, a charity which offers legally-based advice, support and training to ensure children and young people with Special Educational Needs and Disabilities (SEND) access the right education.	Parents, young people & professionals	Education	2 helplines. Full details on their website	A web based submission form is used rather than an email address	www.ipsea.org.uk	<p>Have been operating as normal, both helplines are running and support services are running.</p> <p>Keeping website updated almost daily</p> <p>Will be delivering face-to-face training via Zoom from this week. Financial issues are a concern.</p>
Kids – KIDS are a national charity providing a wide range of support services to disabled children, young people and their families. We	Parents, young people, Professionals	Education, Health and Social Care				<p>All staff working remotely.</p> <p>In terms of the mediation service, it has been business as usual. Within week 1 did intensive training for all mediators on remote platforms.</p>

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offer our support to the whole family with the aim of giving disabled children a brighter future						<p>Being really flexible to work on a case by case basis to see what works. Had remote mediation with technical challenges, but there is an understanding that we are all in this together so people are being adaptable.</p> <p>Working round everything on a case by case basis, the message to put out there is that everything is up and running.</p>
National Autistic Society - We are the leading UK charity for people with autism (including Asperger syndrome) and their families. We provide information, support and pioneering services, and campaign for a better world for people with autism.	Parents, young people, Professionals	Education	0808 800 4102	educationrights@nas.org.uk	www.autism.org.uk	
		Transition Support	0808 800 0027	transitionsupport@nas.org.uk		

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National Deaf Children's Society - The National Deaf Children's Society is the leading charity dedicated to creating a world without barriers for deaf children and young people.	Parents, children, young people & professionals	Education, health and social care	0808 800 8880: Monday to Friday 9am – 5pm 07860022888 (SMS)	helpline@ndcs.org.uk	www.ndcs.org.uk	They now offer BSL and live interpreters. The live chat is up and running, as well as a daily blog on COVID-19. Community engagement work has decreased but looking at webinars for this. The appeals team has been going on as normal, getting evidence from schools is more difficult than usual.
Network 81- An organisation that gives practical advice and advocacy via a helpline on education. Also provides training courses for parents, and campaigns for properly resourced education	Parents, children, young people & professionals	Education	0845 077 4055	Advice@network81	http://www.network81.org.uk/	Normally goes to people's homes to talk to them, but cannot at the moment. Biggest challenge has been trying to get hold of people. Success has been the tribunal with Sutton. Helpline on mobile phone, which has been effective.
SOS SEN - A national charity aiming to empower parents and carers of children and young people with SEN and disabilities to	Parents, children & young people		0208 538 3731: Weekdays during term-time, 9.30am-12.30, 2-5. Tuesdays	admin@sossen.org.uk	www.sossen.org.uk	Still running advice lines, with capacity to expand these and will be running throughout the Easter period. When new term starts will be looking at more online webinars/options to keep

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access the help they are entitled to, particularly in the education system.			and Wednesdays 8-10pm			meetings going amongst volunteers etc.
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Guidelines for Parents/Carers looking for support with Tribunal/dispute

Unlike other jurisdictions such as the Immigration Tribunal there is no regulation in the field of SEND (special educational needs and/ or disabilities) representation. This means, in effect, that anyone can set themselves up as a 'SEND Advocate' and can charge for, often unregulated, services.

The recent rise in cases to the SEND Tribunal (SENDIST) has also seen a rise in individuals setting themselves up as advocates in this way. While parents and young people are free to use whoever they wish to support them, this guidance is to help inform and support that choice.

Please remember you have a right to **free** impartial information, advice and support from trained, [SEND specialists](#). You can of course choose to pay for additional support and services if you choose.

Things to consider when looking for support with Tribunal or Dispute:

1. What **qualifications** and **training** does the organisation or individual have and how relevant/recent are they/ is it? Are they a specialist in the SEND field? Do they have extensive knowledge about relevant law?
2. What **experience** do they have? Ideally the person supporting you will have lots of different experience of Tribunal and the tribunal process, and if not, will be supported by others who have. Be wary of those claiming high success rates - some will present marginal impact as success
3. Do they have **references** and are these easily available, positive and recent? Ideally any reference would talk about the quality of the support given and not just 'winning'.
4. Are you **paying**? If so, make sure you know exactly what you're paying for and how much. Before you pay, it is worth fully exploring all the [free local and national options](#).
5. Do they have **liability insurance**? If things go wrong and you wish to take action against your advocate for poor advice, or if the Tribunal seeks costs (rare but not impossible) do they have adequate insurance to cover this?
6. What is their **reputation**? It may be tempting to use someone who is aggressive and promises to win but this is not something that generally come across well at a Tribunal hearing and can damage ongoing relationships with the LA/CCG. Looking at social media, doing an internet search and asking people who have used them is always a good idea.

For further thought, thanks to Matt Kerr and Special Needs Jungle who wrote this article a while back.

<https://www.specialneedsjungle.com/getting-help-with-ehcps-be-careful-out-there/>

The SEND Information Organisations Group is a network of national organisations who provide free information, advice and support to children and young people with SEND and/or their families. SENDIOG members: ACE; Civil Legal Advice; Contact; Down's Syndrome Association; Information, Advice and Support Services; IPSEA; National Autistic Society; National Deaf Children's Society; Sense and SOS-SEN.

YouTube links:

SEND35A

[Refusal to Assess Appeal Videos - YouTube](#)

SEND 35

[EHC Appeal Form Videos - YouTube](#)