

4. WHAT YOU CAN DO IF YOU DISAGREE



YOU DISAGREE WITH THE LOCAL AUTHORITY DECISION NOT TO ASSESS YOUR CHILD FOR AN EHCP OR TO ISSUE A PLAN, OR WITH THE FINAL EDUCATION, HEALTH AND CARE PLAN

Remember that at any point, if you can't agree on any aspect of the plan, you can ask to take part in disagreement resolution. This is in ADDITION to any mediation or appeal.
*If your appeal is only about placement you do not have to seek mediation first

For decisions where there is no right of appeal to the First Tier Tribunal, decisions can be challenged via Judicial Review. Families will need legal advice in relation to Judicial Review and legal aid may be available to pay for this in some circumstances.

If you are not satisfied with either a local authority's decision not to assess your child for an EHCP, OR not to provide an EHCP after a statutory assessment, you can appeal to the SEND Tribunal.

Appealing to the First Tier Tribunal can be done in the name of the parent or the child/ young person.

Additionally, if you are unhappy with any of the needs or provision or placement offered in your child's final EHCP, you can also appeal.

There is a trial underway currently (2018/19) to include health and social care as a single route of appeal. Please check the status of this at the time of your appeal. A large percentage of appeals are settled at 'case management' stage, via telephone hearings.

If you lose your FTT appeal, you can take legal advice in consideration of a further appeal to the Upper Tribunal, usually on a point of law.

Before appealing about

1. Refusal to assess,
2. Refusal to issue an EHCP, OR
3. A final EHC plan

you must first contact a mediation advisor. The LA must inform you about how to do this*. The mediator will give you evidence that you have done so. You will be encouraged to participate in mediation, however, this is not compulsory if you feel that mediation will not work. If at all possible, keep the lines of communication open - you can still reach an agreement that works for your family at any time up to the date of Tribunal.

To appeal, you have two months after the local authority's decision. You can register an appeal when you have a certificate from the mediator. If you choose to go to mediation & it fails, you will have a minimum of a month after that to register an appeal.

Full details can be found in Chapter 11 of the SEND Code of Practice

If you do decide to head for the SEND Tribunal, there are free sources of legal advice to help such as:

IPSEA www.IPSEA.ORG.UK

SOSSEN: www.SOSSEN.ORG.UK

Contact A Family SEN line www.Contact.org.uk

IASS for young people: cyp.iassnetwork.org.uk

IASS: <https://councilfordisabledchildren.org.uk/information-advice-and-support-services-network>

(SNJ advice: It is not advisable to go to appeal without seeking specialist legal advice and /or advocacy support such as above)

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THANKS TO IASS NETWORK FOR ADDITIONAL INFORMATION

1. SEN SUPPORT IN SCHOOLS



Before you meet:
Write down your concerns and points to raise. Consider taking a friend or partner to make notes so you can concentrate on the conversation.

If you disagree at any point, you can ask to involve the Disagreement Resolution service or speak to the Information, Advice & Support Services Network

IF YOUR CHILD'S NEEDS ARE CLEARLY SEVERE, AN EHCP ASSESSMENT MAY BE REQUESTED WITHOUT THE SEN SUPPORT STAGE (OR CONDUCTED BEFORE SCHOOL AGE)

START HERE:

YOU, OR YOUR CHILD'S SCHOOL ARE CONCERNED THAT YOUR CHILD MAY HAVE A SPECIAL EDUCATIONAL NEED

Meet with your child's class teacher and/or SENCo to discuss concerns



Agree on a plan of action using the Assess, Plan, Do, Review cycles & decide together which external assessments will be needed

Work with the school to see what services from the Local Offer your child can access to help them overcome any barriers to learning

If your child has a medical condition, ask to see your school's policy that complies with the Government's Statutory Guidance Supporting pupils at school with medical conditions. Ask how these guidelines can be used to support your child, if necessary

If progress is made, continue the cycle of Assess, Plan, Do, Review. However, at any point, if you feel the interventions are not working, you can choose to apply for a statutory assessment for an Education, Health and Care Plan

Make sure you meet the expert after they have carried out any external assessment on your child, so you can give them any extra information. You know your child better than anyone and your input is vital

There may come a point at which you agree your child has made sufficient progress and no further support is required. However, you can ask for SEN help again at any point if you think it is needed.

When the report(s) have been received ask to meet with the class teacher and SENCo again to revise any interventions in the light of the report recommendations. Agree a date for initial review

An EHCP can be requested by parent, young person, teacher or anyone else concerned about the child's SEN

On the review date, discuss with the teacher/SENCo how the interventions are working, any changes that need to be made and a further review date

Move to Flow Chart 2 "Requesting an EHCP"

WHERE, DESPITE THE SCHOOL HAVING TAKEN RELEVANT AND PURPOSEFUL ACTION TO IDENTIFY, ASSESS AND MEET THE SEN OF THE CHILD OR YOUNG PERSON, THE CHILD OR YOUNG PERSON HAS NOT MADE EXPECTED PROGRESS, THE SCHOOL OR PARENTS SHOULD CONSIDER REQUESTING AN EDUCATION, HEALTH AND CARE NEEDS ASSESSMENT.

When your application has been received, you should be given the details of your local SENDIASS who will be able to advise and support you through the process. These are free and impartial services who provide information, advice and support to children, young people and parents on a range of SEND issues, including your EHCP application. You can also search for resources on the Special Needs Jungle site and on the IPSEA website, among others.

2. REQUESTING AN EHCP NEEDS ASSESSMENT



An EHCP can be requested by parent, young person, teacher or anyone else concerned about the child's SEN

WHERE, DESPITE THE SCHOOL HAVING TAKEN RELEVANT AND PURPOSEFUL ACTION TO IDENTIFY, ASSESS AND MEET THE SEN OF THE CHILD OR YOUNG PERSON, THE CHILD OR YOUNG PERSON HAS NOT MADE EXPECTED PROGRESS, THE SCHOOL OR PARENTS SHOULD CONSIDER REQUESTING AN EDUCATION, HEALTH AND CARE NEEDS ASSESSMENT.

A full diagram of the process can be found in the SEND Code of Practice

Contact your local authority's SEND department and ask to start the Statutory Assessment process. They must reply within six weeks of your initial enquiry (make a note of the date)

When your initial request has been received, think about what help you might need with your application. The government funds impartial advice from trained advisors called SENDIASS who can help you through the process. They are available in every area and offer free information, advice and support to children, young people and parents on a range of SEND issues. This includes EHCP applications.

There is then a six-week period during which the LA should gather evidence of your child's SEND e.g. school reports, Assess/Plan/Do/Review documents, speech & language/Ed Psych/ Occupational Therapy or other reports. *If possible, parents themselves may want to gather together relevant reports and information as well, to ensure everything is considered by the LA. This will also assist as a timeline reminder when you are writing your child's story as part of the application.*

You will need to explain why your child needs an EHCP assessment. It can be useful to write your child's story from birth, including any relevant information from any previous reports, assessments or diagnoses. Include how your child's difficulties impact upon your whole family and what support your child already has that really helps. Remember to think about their strengths as well! Make sure you number the reports and include them in your application (only ever send copies). Any medical and social care needs should be included.

THE LOCAL AUTHORITY DECIDES WHETHER OR NOT TO CONDUCT AN ASSESSMENT OF SEND.

If your assessment request is refused, the LA should advise you of other options short of statutory assessment that can support your child. You can find services listed on your area's Local Offer website that your school may be able to access to support the Assess, Plan, Do, Review process. Your LA should never just say 'No' without looking at what else can be done to better help your child.

If you are not satisfied with this decision or any other help sourced from the Local Offer help you can seek mediation and/or appeal to the First Tier SEND Tribunal

If an assessment is agreed, move to part 3 "Conducting an assessment"

Move to part 4, "Disagreements"

3. CONDUCTING AN EHCP NEEDS ASSESSMENT



THE LOCAL AUTHORITY HAS DECIDED THAT A STATUTORY ASSESSMENT OF YOUR CHILD'S SEND IS REQUIRED.

Meet the LA representative to decide if any further external assessments are needed, e.g. OT, SLT and Ed. psych. You may want to take a friend, partner or advocate to meetings.

Any organisation asked to carry out an assessment or offer advice must comply within 6 weeks.

Draw up a profile, that can be used to show practitioners so they can understand who your child is as an individual. Your school may help you with this. This helps to tailor the support specifically for your child. Include what they like about themselves, what is important to them and how they would like to be supported as an individual.

Ensure that your final submission includes all the evidence and reports (copies only). Number them and list them all on a separate sheet. Update your parental statement to reflect any other assessments or changes. Don't forget to include all the interventions that have been tried by both school staff and from the local offer.

The local authority makes a decision whether to issue an EHCP or whether it thinks your child can be helped sufficiently from the Local Offer

If the LA decides not to draw up an EHC plan, it must inform the parent within 16 weeks of the original request for an EHC plan. There is a right of appeal.

The local authority will prepare a draft EHCP and send it to you to be reviewed. The Plan writer/coordinator should be expected to work with you during the drafting to co-produce the plan. Make sure all the sections are filled out to your satisfaction and are accurate. Think about if & how a personal budget might be used to support your child's needs. The legal duty to ensure your EHCP complies with the law lies with the LA

If an EHCP is to be drawn up, meet with the plan coordinator from the local authority and any representatives from education, health and social care to discuss the provision that will be required for your child from each sector.

Remember that at any point, if you can't agree on any aspect of the plan, you can ask for disagreement resolution

The LA send the draft plan & should also invite you to apply for a personal budget for your child.

Once you receive the draft plan, you have 15 days to check through to ensure all needs are included and are met with specified and quantified provision. You can request alterations if not. During this time you should name your preferred school and agree how any personal budget will be allocated.

For the provision sections F to H2, ensure all the provision you agreed on earlier with the education, health and social care representatives and during your meetings with the plan writer, as well as realistic outcomes.

The LA has to discuss the placement with the proposed school to ensure that it is suitable before naming it in the EHCP. The institution should respond within 15 calendar days.

AFTER FURTHER CONSULTATIONS BETWEEN THE LA & THE FAMILY, THE FINAL PLAN IS ISSUED. IT MUST BE REVIEWED AT REGULAR INTERVALS TO ASSESS PROGRESS

The whole process must be completed within 20 weeks.

The plan is implemented. If you're unhappy with the final plan, you can appeal after contacting the mediator. (See sheet 4)

If you want to appeal, go to sheet 4