



Refusal To Assess Guide

Introduction to the SEND35A appeal form

To appeal to the tribunal regarding a refusal to assess for an Education Health and Care Plan (EHCP) you will need to complete the following form: [SEND35A - Application for appeal - Refusal to secure an EHC Needs Assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/612222/SEND35A_-_Application_for_appeal_-_Refusal_to_secure_an_EHC_Needs_Assessment.pdf)

Please note the checklist on page 9. This includes information you **must** send with the form to the tribunal.

Mediation

You must include the mediation certificate with your completed form. The decision letter, sent to you by the Local Authority, gives you details about the mediation company you need to contact. You do not have to go to a mediation meeting, but you do need to contact the mediation company, consider it and obtain the certificate either way to make your appeal. You can find more information regarding this step in [our guide to mediation](#).

Timeframes and Legal Aid

You must send your appeal form to the SEND Tribunal within **two months** of the date of receiving the decision letter, or **one month** from the date you obtain a mediation certificate, whichever is the later. If you have a good reason for missing the deadline, you might be able to submit a late appeal, but you would need to explain the reason(s) in section 3 of the appeal form. You would also need to explain why you think your appeal is likely to succeed if the tribunal do decide to register it late.

Before completing this form, we advise [checking if you are eligible to receive legal aid as](#) you may be able to get funding for a solicitor to complete this form for you and to give you further advice. You can [read our guide for more information on eligibility](#).

Young People

If the appeal is regarding a young person who is between 16 to 25 years old, the young person is legally entitled to make the appeal themselves. If the young person does not have the mental capacity to do this, the parent/carer can submit the form for them on their behalf.

SEND and You can either offer independent support to Young People who want to make an appeal themselves or advise their parents if they consent to this. You can use our [Contact Form](#) to enquire about this.

Completing a SEND 35A form

Section 2: Reasons for appeal

General Tips:

- You can use a separate word document headed 'reasons for appeal' to answer the questions within this section if you do not have enough room in the boxes given. You can then put 'see attached reasons for appeal' in the boxes and submit the word document along with the appeal form. Make sure you list the word document in section 11 of the form: 'Evidence to be considered in the appeal.'
- Try to address the reasons given by the Local Authority in your decision letter in your response.
- The tribunal process is an evidenced based process. You will need to consider the legal test, make your points brief and provide evidence that supports your points where possible.

The Legal Test:

Section 36(8) of the Children and Families Act 2014 states:

'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.'*

Parts a) and b) are addressed in questions one and two on the form, which we will explain below.

Question one: Whether the child or young person has or may have Special Educational Needs (SEN)

You will need to explain the areas of need your child/ young person has or may have. Consider the following:

- List any diagnosis that your child has or is awaiting assessment for – however please note your child does NOT need a diagnosis to satisfy the legal test to show that that have or may have SEN. You may have evidence from other services, including the school/setting, which could show SEN needs. If you wish to request information about your child from your school you can use [model letters 18 or 19 from IPSEA](#)

- List the areas that your child struggles with. It may help by thinking about your child's needs within these four broad areas of need: cognition and learning; communication and interaction; social, emotional and mental health; physical and sensory needs. What are their needs within these areas, can you link these with any evidence – for example, needs that have been assessed by their educational setting in any reports or any therapy reports.
- This section wants you to focus on your child's learning needs. If there are any health or social care needs which you feel are impacting on your child's learning needs, then you can also mention these here.
- Mention any special educational needs that you feel have not yet been fully identified and therefore would require full assessment of needs to be fully understood.

Question two: Whether the child or young person may require an EHC plan?

In this section you will need to explain why the school/setting *may* not be able to meet your child's needs without an EHCP. For each point you will need to refer to evidence where possible.

There are a few possible scenarios that you may be able to apply to your own situation when answering this question:

First Scenario:

You believe your child/young person has underlying SEN that the school or other professionals have not yet identified. This scenario may also apply to a child who is not attending an educational setting or only attending part time.

Some examples:

Frequent detentions/ suspensions due to behaviour.

Managed moves

Having to be taught outside the main classroom regularly.

Being on a part-time timetable.

Having issues with organisational skills and homework.

High levels of anxiety issues with school attendance or school avoidance.

Sensory issues such as finding a noisy classroom overwhelming.

Through home schooling you have identified that your child is not making progress or have concerns that they may have underlying needs.

Possible evidence you could provide to show this: school incident reports, emails with school, attendance records and suspension/exclusion letters, behavioural support plan. If your child is not educated in a school/college you may also wish to consider any medical, therapeutic reports or correspondence, evidence from club or activity leaders or personal tutors and childminders.

Second Scenario

You feel that your child/young person's SEN needs have been identified by the school/setting, but the support they require to meet these needs go above and beyond

what the school can ordinarily offer in terms of SEN support. It may be helpful to refer to ask the Local Authority to provide information on support they expect schools to be able to provide.

Possible evidence you could provide to show this: ask the school/setting for documentation on what they have identified as needs, an explanation of what things they have put in place, the impact of this and what extra support they feel is needed.

Third Scenario

It may be that the setting has put into place SEN support for your child but even with this support in place, they have not made expected progress.

Possible evidence you could provide to show this: assessment results and school reports, SEN support plans (especially where multiple plans/reports show little or no progress over time), any other reports from professionals involved that evidence what support is needed.

Forth Scenario

The current setting is putting in support that is already above and beyond the ordinarily available level of SEN support and it is only with this additional support in place that your child/young person has been able to improve. For example, a child who is due to move to secondary school or a post 16 option may not be able to access the same level of support they are currently accessing without an EHCP.

Possible evidence you could provide to show this: SEN support plans, annotated school work, School or college SEN information reports (you can find these on school/college websites and they should identify the support a child can offer). You could also approach the placement directly to see if they would support with any evidence.

Advice on Providing Evidence

- When submitting your SEND 35A form please ensure you are also submitting the documents requested in Section 8 of the form.
- Make sure you attach copies of any evidence you have referred to in your form. You will also need to list these documents in the chart on page 11 of the appeal form.
- Refusal to assess appeals are generally heard 'on the papers' which means that there is no "in-person" hearing. The tribunal will decide based on the information provided in the appeal form and attached evidence and it is an 'evidenced based' process. This means that where possible your points need to be backed up with evidence.
- If you have any evidence which is not yet available do not delay sending in your appeal form. Write your points in Section 2 of the form and write "evidence to follow" as well as who you requested the evidence from. Once the appeal is registered you will get a date by which final evidence can be submitted.
- Include your child's views, if possible, for example what do they feel is working well in their setting and not working well. Views can be taken in several ways, if your child is unable to write down their views it may be that you could ask them the questions and make a note of their responses, they could circle emoji to represent how they feel about a certain question or even draw pictures. Please [contact us](#) if you or your young person would like independent support gathering your child's views