

NY Special Education Needs and Disability Information Advice  
Support Service  
2019

# Refusal to Assess Tribunal Appeal

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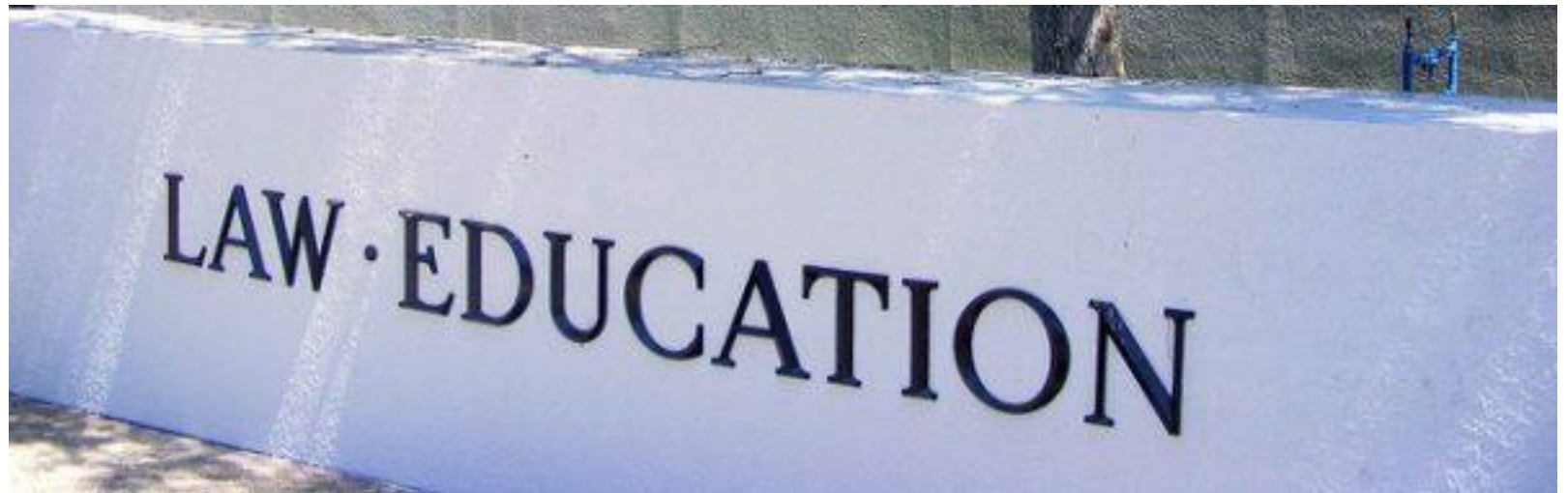
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# Aims for today

- To understand the tribunal appeal process following a Refusal to Assess decision
- To gain a better understanding of the legal test for EHC Assessment
- To become familiar with the Send 35a Tribunal form & how to complete it .

# Law

- Children and Families Act 2014 – Section 3
- SEND Code of Practice 2015 Paragraph 9:16
- SEN Regulations



# Legal test – Section 36(8) CFA 2014

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, 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.

# Part 1 : The Child or young person has or MAY have SEN

It is not a requirement that they definitely have SEN- only that they **may** do.

The definition of SEN :

Section 20(1):

*“A Child or young person has special educational needs if he or she has a learning difficulty or a disability which calls for special educational provision to be made for him or her.”*

So the question being asked is whether it is possible that the child or young person

- has either a learning difficulty or a disability: AND
- That this learning difficulty or disability requires special educational provision to be made for him or her

Part 2: It may be necessary for Special educational provision(SEP) to be made for the child or young person in accordance with an EHC Plan

- Remember:

Under the Act “SEP” is not just about education but education or training, which is additional to or different from what is available in mainstream schools in England

# Making the case-possible approaches

- You need to explain in the “reasons for appeal” why the young person fits within the legal test :
- What the special educational needs of the young person are , i.e., what is the learning difficulty or disability which calls for SEP to be made?
- Why is may be necessary for the SEP to be set out in an EHC plan?

*Remember ! These tests are about Special educational needs & Special educational Provision*



# 3 ways to establish need for an EHC Assessment

1. A Full assessment is the only way to find out what the difficulties are & what help is needed.
2. The needs are understood , but the school or educational establishment may not be able to supply all the educational help needed unless it receives extra help from the LA or;
3. The School or other institution has provided all the help that could be expected but the young person has not made enough progress.

Remember ! The test is not that a EHCP is necessary , only that it may be necessary

# Evidence

Primary evidence about the young person is key:

- Prison, College, school reports
- Assessment records (what they did, what effect they had)
- Professional reports (specialist teacher, Educational psychologist etc.)
- Evidence of strategies/interventions previously/currently being used

Other examples:

- Teacher report & or learning support assistant report
- A letter from young person's GP
- Other professionals such as CAMHS, Social Care , YOT , Careers advisor
- Evidence from the young person when necessary (can be written by 3<sup>rd</sup> party)
- Examples of young peoples work if appropriate
- Evidence from Secure Establishment/YOI Governor

# How to register an appeal

- Complete form SEND 35a with the young person (see form) within 60 days of the date on the LA letter
  - Normally a mediation certificate is required, Judge Tudur has agreed to waiver this requirement for a young person in custody
  - Submit the form and all evidence to the SEND Tribunal service
- Note! All Refusal to assess cases are heard on the papers only

# What needs to be included?

- A signed & dated letter from the home LA refusing the assessment & giving the parent/carer or young person the right of appeal to the HM Courts & Tribunal Service
- Reason for making the appeal (Section 2 of the form)
- As much supporting evidence as possible (see evidence slide)
- Note! Need for mediation certificate is waived
- Form must be Signed & Dated

# WHAT NEXT

- Tribunal appeal will be registered within 10 working days & appeal date within 12 weeks. ( Judge willing to reduce this to 7 weeks for custody cases)
- LA have 30 days after receiving the appeal from the tribunal to decide whether to oppose or concede the appeal
- Concede – EHC assessment will take place over the following 8 weeks & must include an Educational Psychology assessment (SEN regs 6(1))home LA will arrange this.
- Oppose – appeal hearing will take place on the dates given, extra evidence can be submitted by both parties by specified dates

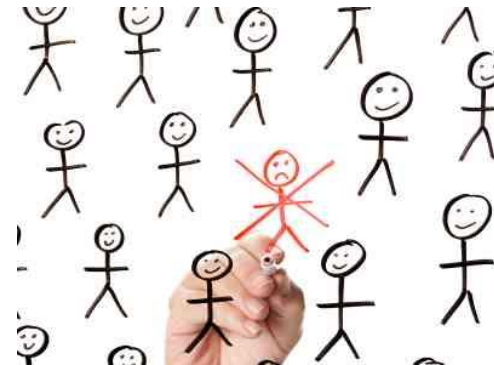
# Decision given within 15 days after the hearing

## Agree with appeal



- LA ordered to start 8 week EHC assessment process
- Must include EP assessment

## Disagree with appeal



EHC Assessment does not take place .

# Useful Websites:

- <https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>
- [www.ipsea.org.uk](http://www.ipsea.org.uk) (refusal to assess pack)
- [www.councilfordisabledchildren.org.uk](http://www.councilfordisabledchildren.org.uk)
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