

Appealing to SENDIST regarding an Education, Health and Care needs assessment (EHCNA) or EHC Plan



Ask Us Nottinghamshire 2018-08-28

Appeals to SENDIST (First Tier Tribunal)

Can only be made by :

- **Parents/those with parental responsibility for a child up to the age of 16**
- **A young person aged over 16 and up to 25 years**

Parents can :

- run an appeal on behalf of their young person over 16 (but it must be the young person's name on the paperwork).
- be represented by someone throughout the appeal who is expected to have a working legal knowledge of the issues brought to appeal (solicitor, supporter from IPSEA* or other disability organisation, IASS); young people and some parents may also be able to claim legal aid.
- have a supporter with them who does not speak on their behalf, is not questioned and does not pose any questions at the hearing.

NB This information applies only to appeals against decisions about the EHC needs assessment or the EHCP. Appeals can also be made challenging discrimination of children/young people with special educational needs and disabilities.

* Independent Parental Special Education Advice

Legislation



The tribunal will make a decision based on:

- Children and Families Act 2014
- Code of Practice for Special Educational Needs 2014
- Special Educational Needs and Disability Regulations 2014
- Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chambers) Rules 2008

What decisions can be appealed?

An appeal is against a specific decision made by the LA. It must be :

- Refusal to carry out an EHCNA (or a reassessment)
- Refusal to issue an EHCP
- Refusal to amend an EHCP (Content) - Sections B, F (and see below)
- Placement (school, college etc)
- Cease to maintain the EHCP (LA decides EHCP no longer needed)

National pilot 'Single Route of Redress' for 2 years allows for health and social care sections (C,D,G,H) to be appealed against as well as the education sections B and F. This applies only to appeals regarding content of the EHCP.

Who attends a hearing?

Tribunal panel - 3 members

Clerk to the panel

LA people + possibly legal representative

Parents + supporter or legal representative

Child/Young person - need not attend the full hearing

Witnesses - for LA and for parents/young person

Tribunal panels are reportedly kind to parents attending without legal representation. Parents often say that they felt the tribunal panel was on their side and that the LA and representatives were questioned fiercely by panel members.



Remember.....



- Before you can lodge an appeal you must have a mediation certificate to show that you have at least considered mediation. The only exception is when the appeal is solely about the placement (Section I); since the content of Sections B and F in particular will heavily influence the type of placement named in Section I, parents are generally advised to appeal against both content and placement.
- Global Mediation Ltd provides advice about what mediation can and can't do; it is the **mediation advisor** for Nottingham City and Nottinghamshire. First, you must have a telephone discussion with an advisor from Global Mediation and decide whether you want to have a mediation meeting or not. If you decide not, then you will be sent a mediation certificate within 5 days so you can then lodge your appeal.
- If you decide to have a mediation meeting, you will be referred to a **mediation provider** (Kids or Together Trust); this service will provide a facilitator to arrange and chair a meeting between you and the LA. Probably there will also be a representative from school if the appeal is a refusal to assess or a refusal to issue a Plan. If health or social care issues are to be raised then a designated officer from health and social care must also be present.
- Following the mediation meeting, you will be issued with a mediation certificate so that you can lodge an appeal if you still want to.

How to lodge an appeal

Refusal to assess or reassess

- Use form SEND35A

All other appeals

- Use form SEND35

Appeals for a child/young person in custody

- Use SEND28

When to lodge an appeal

You must lodge your appeal within a given time, whichever of these is the longer :

- 2 months from the LA's decision (usually taken as the date on the letter to parent/young person).
- If a mediation meeting is requested the LA has 30 days from being notified of that to arrange a meeting, and then you have 30 days after that within which to appeal.

A mediation certificate must be provided when lodging the appeal.

Refusal to assess/reassess - what evidence do you need?

- Letter from the LA telling you the decision and reasons for that
- Evidence presented to the LA on which the decision was based - parental information form, school/college information form (+checklist for County), letters/reports from paediatrician/therapists/CAMHS, report from specialist advisory teacher/TA (Nottingham City Inclusive Education Service, Nottinghamshire Schools and Families Support Service), educational psychology report, report from children's social care etc.
- Any new evidence not available to the LA at the time of their decision.

You might argue that there was very little evidence provided to the LA or that the LA has failed to take into account/misinterpreted some of the evidence or that new evidence is now available that was not provided to the LA.

Refusal to issue an EHCP - what evidence do you need?

- Letter from the LA telling you the decision and reasons for that
- Information gathered during the assessment process - information from parent/child/young person, school/college information form, reports from paediatrician/therapists/CAMHS, report from specialist advisory teacher/TA (Nottingham City Inclusive Education Service, Nottinghamshire Schools and Families Support Service), educational psychology report, report from children's social care etc.
- Any new evidence not available to the LA at the time of their decision.

Your argument is that your child has a level of need which requires an EHCP and you need to pick out from the reports anything that shows that resources normally available in a mainstream school will not be adequate. Another argument might be that your child needs a place in a special school as the environment in a mainstream school is not suitable, or the level of expertise on the staff is not sufficient to meet their needs.

Content of the EHCP - what evidence do you need?

- Any new evidence/reports provided that were not available to the LA when the EHCP was drafted - new diagnoses, notes from meetings etc, particularly anything that indicates the school placement is insecure or breaking down.
- Reports used to draft the EHCP. If you disagreed with what was in a report, this should have been raised already with the professional who wrote the report. The best way to do this is by discussing the issues with the LA assessment caseworker and asking them to go back to the professional involved. If one report is at odds with all the others then you need to explain this in your appeal case.

Placement - what evidence do you need?

- If you are arguing against the LA's named school and for a particular school of your choice, you should aim to show that the named school cannot meet your child's needs and why. You must also demonstrate that your preferred school can meet your child's needs, and you will need evidence from the school to state that.
- If you are arguing against a type of school, because the LA has not named a school but just stated that it should be eg a mainstream school, or a special school, you need to be clear as to why you feel that type of school is inappropriate and indicate your reasons for wanting a place at your preferred school or type of school.

Ceasing to maintain the EHCP - what evidence do you need?

- For a school age child, you need evidence that they continue to need the additional support an EHCP can provide over and above the Graduated Response.
- For a young person over school age and attending college, you need to show that the college cannot provide an appropriate level of support without the resources available via the EHCP.
- For a young person over school age wanting to go back to college (eg after an unsuccessful course) or wanting to start a first college course where there are concerns regarding appropriate support, you need to demonstrate that the level of support required cannot be provided other than via an EHCP.

Liaison with the LA - contact the relevant City or County team depending on where you live.

Nottingham City parents and young people should contact the **SEN team** 0115 8764300, or email ehc.assessments@nottinghamcity.gcsx.gov.uk
Postal address : SEN Team, Glenbrook Management centre, Wigman Road, Nottingham NG8 4PD.

Nottinghamshire parents and young people should contact the **Integrated Children's Disability Service** duty number 0115 8041275 or email icds.duty@nottsc.gov.uk
Postal address : ICDS Assessment Team (Duty), Meadow House, Littleworth, Mansfield, Notts NG18 2TB

You can also contact Ask Us Nottinghamshire for impartial and confidential information and advice about appeals to SENDIST and support to make an appeal.

 0800 1217772

 askus@futuresforyou.com