



## Refusal to assess pack

### **Advice for parents and young people appealing to the Special Educational Needs and Disability Tribunal (the SEND Tribunal).**

#### **1. What is the SEND Tribunal?**

The SEND Tribunal is an independent national tribunal which decides appeals against local authority (LA) decisions about the [special educational needs \(SEN\)](#) of children and young people. It also hears disability discrimination claims against schools and maintained nurseries. Its full name is the First-tier Tribunal (Special Educational Needs and Disability).

#### **2. How to use this pack**

This pack has been written to help you as parents and young people make an appeal in the SEND Tribunal against your LA's decision not to carry out an [education, health and care \(EHC\) needs assessment](#).

Over the years we have supported thousands of parents and young people making this type of appeal. We have drafted this guide based on our experience and legal expertise to help guide you through the process.

**This pack relates to the law that applies in England. Relevant sources of law are:**

- [the Children and Families Act 2014](#) (CFA 2014)
- [The Special Educational Needs and Disability Regulations 2014](#) (The SEND Regulations 2014), and
- SEN and disability case law. Case law is the interpretation of the law by higher courts in judgments about previous SEN disputes. Case law can explain what certain words in the law mean. For example, case law makes clear when an LA must carry out an EHC needs assessment. It is binding, meaning the SEND Tribunal (and your LA) must follow it.

The SEND Tribunal must also have regard to the [SEN and Disability Code of Practice](#) (the Code). This is statutory guidance which advises schools and LAs on identifying and making provision for children with SEN. Because the Code is guidance, not law, the SEND Tribunal does not have to follow it to the letter, but it generally accepts the Code's guidance when making its decisions.

### 3. Your LA's decision and your right of appeal

The first step to getting an [EHC plan](#) is to [request an EHC needs assessment](#). A request can be made by you, or by school or college. Once a formal request has been made, your LA must decide whether to carry out an EHC needs assessment, and must notify you of its decision within **6 weeks** of the date of your request.

If it decides not to carry out an EHC needs assessment, your LA must give you a decision letter, setting out the reasons for its decision. The decision letter must also contain the following information:

- your right to appeal the decision to the SEND Tribunal
- the time limits for doing so
- information about mediation including relevant contact details, and
- the availability of —
  - disagreement resolution services, and
  - information, advice and support.

#### Who can appeal?

To be able to appeal, you must be:

- the [parent](#) of a child, or
- a [young person](#).

If the decision concerns a child, it is the parent who has the right of appeal.

If the decision concerns a young person, then it is the young person who has the right of appeal. Where a young person cannot make a particular decision for themselves, because they 'lack capacity' under the [Mental Capacity Act 2005](#), their parent or another representative can appeal on their behalf. Our pages on [young people aged 16-25](#) contain helpful information on the rights of young people.

#### Mediation

The law says that in most appeals you have to consider mediation and get a mediation certificate before you can register your appeal. **You cannot send a refusal to assess appeal to the SEND Tribunal without a mediation certificate.** You can find out much more about [mediation](#) on our website.

You do not have to take part in mediation to register your appeal, only consider it. If you have had a lot of discussions already with your LA you may feel it would be of little use, and you may prefer to get your certificate and appeal right away. If you have never had a proper talk with your LA about why it has refused your request for an EHC needs assessment,

mediation may help. You might also consider it to give yourself more time to appeal, if it extends the deadline to appeal (please see below).

To consider mediation, you must ring the number for the mediation service your LA gives you (remember your LA must include this information in its decision letter) and talk to a mediation adviser. You can ask for alternatives if you cannot use a phone.

If you tell the mediation adviser you do not want to mediate, you will get a certificate from them saying you have considered it. The mediation adviser must send this certificate to you within 3 working days of you telling them this. Once you receive your certificate you can submit your appeal to the SEND Tribunal.

If you would like to mediate, you must tell your LA and the mediation adviser. Your LA must then arrange for mediation to take place within 30 days. After the mediation session you will be sent your mediation certificate, and you can submit your appeal to the SEND Tribunal if mediation did not result in your LA changing its mind or you still need to appeal.

If your LA fails to arrange mediation within 30 days of you asking it to, it must tell the mediation adviser once it realises this, and the mediation adviser will give you your mediation certificate at that point. This means that you can go ahead and submit your appeal whilst you wait for mediation to take place. You still have the right to your delayed mediation at any point during the appeal process. Once the delayed mediation takes place, you will receive another mediation certificate confirming it has taken place, and you can also use that to appeal with should you need to, if you prefer.

### Your appeal deadline

**You must send your appeal form to the SEND Tribunal within two months from the date on your LA's decision letter, or one month from getting your mediation certificate, whichever is later.**

If these dates fall over the **Christmas or summer holidays**, then please read our information online to see [when your appeal needs to be sent in by](#).

### Appealing to the SEND Tribunal

The [SEND Tribunal's website](#) provides useful information on how to submit your appeal and what you need to do. You should make sure that you use the [correct form](#) for refusal to assess appeals..

Our pages on [appealing to the SEND Tribunal](#) provide detailed information about the process of bringing an appeal, including:

- [general advice for all appeals](#)
- [where to get help, including legal aid](#)

- [mediation](#)
- [how to submit an appeal, including time limits and how to fill out the forms](#)
- [the appeal timetable and preparing the case](#)

#### 4. Making your case

If your LA has turned down your request for an EHC needs assessment, you may be wondering how you begin to challenge this and what you need to prove. A very good starting point is to look at the legal 'test', which means what the law says about when your LA must carry out an EHC needs assessment.

##### 4.1 When must my LA carry out an EHC needs assessment?

The legal test is found in section 36(8) of the CFA 2014, which says:

"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..., 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."

This means your LA must carry out an EHC needs assessment if your child (or you as a young person):

- has, or may have special educational needs, and
- may need an EHC plan.

This threshold is quite low. You do not need to prove at this stage that your child or young person definitely has special educational needs, or that an EHC plan is required; only that the child or young person **might**.

You will see the legal test set out above refers to the terms **special educational needs** (SEN) and **special educational provision**. These terms are defined in law. Our page on [special educational needs and provision](#) explains these definitions in more detail.

This legal test is the only test or threshold your LA should apply. We are aware many LAs put in place stricter criteria and policy reasons to refuse EHC needs assessment requests. We commonly see LAs refuse EHC needs assessment requests for the following unlawful reasons:

- more than £6,000.00 needs to be being spent on a child/young person's [SEN Support](#)
- the child/young person needs to be at least two years behind academically, or working below a certain percentile

- an educational psychology report needs to be submitted with the EHC needs assessment request
- SEN Support needs to have been in place for at least three terms before an EHC needs assessment can be requested, or
- Processes such as CAF (Common Assessment Framework) and/or TAF (Team around the Family) processes need to have been carried out first.

However, these things do not appear in the legal test at section 36(8) CFA 2014 and are therefore not valid or lawful reasons for an LA refusing to carry out an EHC needs assessment. If your LA applies additional and/or stricter criteria than that which exists in the law, then it is acting unlawfully. The SEND Tribunal will **only** apply the law; it will not consider your LA's own policies.

The Code contains further detail on what your LA should consider when deciding whether or not to carry out an EHC needs assessment.

At paragraph 9.14 the Code says your LA should consider whether there is evidence that despite your child's education setting taking 'relevant and purposeful action' to identify, assess and meet your child's SEN, your child has not made expected progress. To inform its decision, your LA will need to take into account a wide range of evidence, and should pay particular attention to:

- evidence of academic attainment (or developmental milestones in younger children) and rate of progress
- information about the nature, extent and context of your child's SEN
- evidence of the action already taken by the school or other setting
- evidence that where progress has been made, it has only been as the result of much additional intervention and support over and above that which is usually provided, and
- evidence of your child's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet these by other agencies.

If the EHC needs assessment request relates to a young person, your LA should consider all of these points for you too. However for young people over 18, your LA must also consider whether you need extra time, in comparison to the majority of your peers who do not have SEN, to complete your education or training (this is set out in section 36(10) of the CFA 2014).

Remember though - the Code is guidance, not law and these things listed at paragraph 9.14 are not part of the legal test in section 36(8) CFA 2014. This means that your LA should pay attention to this evidence, but it cannot refuse to consider a request for assessment if this (or other) information is not provided or is unavailable, or if certain steps (like the examples set out above) were not taken before your request was made.

Going back to the legal test now, **you will need to convince the SEND Tribunal that the legal test is met.** Parents, you will need to show your child has or may have SEN **and** may need provision through an EHC plan in order to get the right educational help. Young

people, the legal test is exactly the same for you and you will need to show these two elements are met for you.

To show the legal test has been met, you can argue that:

1. a full EHC needs assessment is the only way to find out what the difficulties are and what help is needed
2. the education setting may not be able to supply all the educational help needed unless it receives extra help from your LA, or
3. the education setting has provided all the help that could be expected but not enough progress has been made even with all the extra help.

**Think about which of these three approaches feels similar to your situation and appeal. Once you have done that, you can start planning your appeal.**

If you think a full EHC needs assessment is the only way to find out what the difficulties are and what help is required, you will need to prove that advice from a number of different professionals is needed to fully understand all the difficulties. In other words, you will want to show that professionals do not yet understand enough about the difficulties, so only a full investigation can help everyone understand the full extent 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 your child or young person **may** need an EHC plan for all the needs to be met.

If you think that either the setting may not be able to supply all the help needed without support from your LA, or the setting has already done all that could be expected but not enough progress has been made, then you will need to show that your child or young person's needs may not be met without an EHC plan. Remember, you do not have to prove that an EHC plan is definitely necessary, only that it **may** be necessary.

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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.

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### **When would an EHC plan be “necessary”?**

Mainstream early years providers, schools and colleges (other than fully independent settings) have duties and resources to meet the needs of most children and young people with SEN. This is known as [SEN Support](#). **An EHC plan would be necessary if your child or young person can't get the special educational provision needed through SEN Support.**

## 4.2 What if the education setting could do more?

An appeal against a refusal to assess is easiest if the education setting (early years provider, school or post-16 institution) agrees an EHC needs assessment is needed, but this is not essential. It may be harder to prove your case if you believe that lack of progress is because the education setting has failed to provide the help it could have done using its own resources.

The SEND Tribunal can sometimes decide it is necessary for an LA to issue an EHC plan because the education setting won't or can't make provision. It may be that the education setting has refused to increase the help because:

- it has a different understanding of the difficulties to yours
- of issues affecting the setting, such as staffing problems
- inspectors have found the setting is failing to provide a proper education, or
- the special educational needs budget has been spent on something else.

There is helpful case law on this subject, which you can read about on our [case law page](#). Sometimes the education setting will say it has done all it can but the LA says it hasn't. This leaves you in a difficult position because you may be unsure who is right. If your child attends a school, you could begin by asking what it actually gets as funding for SEN and what that funding is used for. Maintained schools, including maintained nursery schools and academies, must publish a lot of information in their SEN Information Reports, but that information does not go into detail about of funding and you need to find this out (section 4.5 below explains this further). Young people, you can also ask your school or college for information about SEN funding and what it gets spent on.

You can also ask your LA what help it normally expects local schools and colleges to provide for children and young people with your child or young person's particular learning difficulty.

Your 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 and young people with SEN. It also has to explain its criteria for EHC needs assessments. If your LA has failed to provide this information or has done it in an unhelpful way, you may have to ask it for more information.

You can write to your LA to ask for this information using our [Model Letter 17](#).

If your LA delays in replying, do not miss your deadline for appealing. You can always think about withdrawing your appeal later, if the information you receive makes you think again about your case.

### What your LA may say:

Your LA is likely to say that it delegates (passes on) most of the money for SEN to its schools, so the school can decide the help your child or young person should get. However,

whilst LAs across the country delegate much of the SEN budget to schools, they cannot delegate their legal duties to children and young people with SEN.

Your LA may say your child or young person does not meet its criteria for carrying out an EHC needs assessment. If your LA does say this, remember that the SEND Tribunal will follow the law and is not bound by your LA's criteria. The SEND Tribunal will consider the way your LA or education setting organises its SEN Support, it will want to be sure that the education setting fully understands the SEN in your individual case, and that it can make all the provision needed. If it is not convinced it can, then it may order an EHC needs assessment.

It is important to remember you only have to show that your child or young person 'may' need special educational provision to be provided in accordance with an EHC plan, not that this is probably or definitely the case.

An LA may say it never issues EHC plans for:

- children and young people in mainstream schools
- children and young people with a particular disability, or
- anyone above the bottom 2 per cent of abilities.

Remember, these are blanket policies which 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 education setting should be providing more, then seek further advice from us 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 its decision to refuse your request for an EHC needs assessment.

### 4.3 Your reasons for appeal

You will need to set out your reasons for appeal in section 2 of the SEND 35a [appeal form](#). This asks two questions, which reflect the two parts of the legal test in section 36(8) CFA 2014 (explained under heading 4.1 above). We explain what those two questions are here with some top tips and give more detail in section 4.4 below.

#### Question 1: Does your child or young person have SEN?

On your appeal form you should:

- describe any special educational needs that your child or young person has, and
- describe any special educational needs which your child or young person may have, which have not yet been fully identified.

#### Question 2: Might your child or young person need an EHC plan?

On your appeal form, you should explain why you think your child or young person may need an EHC plan.

The form only gives small boxes for you to write in, so it is best to write “Please see attached” in the boxes and set your reasons out properly in a separate document (it is best to use Arial font, size 12, if you can as this is easiest to read).

Here are some general tips for answering these questions:

#### DO:

- keep it short and to the point
- separate your points into paragraphs
- number your paragraphs or organise them under headings
- refer to the legal issues
- focus on the legal test and how both parts of the test are met, and
- back up your points with **evidence**. The SEND Tribunal will decide your appeal on the evidence you and your LA put before it, so it is vital that you produce the best possible evidence.

#### DON'T:

- get bogged down on history. If there is a long history of difficulties between you and your LA, let the evidence (for example, letters between you and your LA) speak for itself, and
- worry if you don't have all your evidence ready to send it with the appeal form. You can continue to submit evidence after your appeal has been registered with the SEND Tribunal.

### 4.4 Answering Question 1: Does your child or young person have, or may have, SEN?

Explain why you think that your child or young person has, or may have, SEN and back this up with evidence.

Begin by looking at the evidence your LA used to make its decision. This is likely to include:

- documents from the education setting, such as school/college reports
- records of any assessments done by the education setting, what support the setting then provided and what effect that had, and advice from the LA's educational psychologist or other professionals who may have been involved. Remember, educational psychology or other professional advice is not a necessity at this time, but if your education setting has already involved them as part of SEN Support, they may have provided some advice which may be useful to your appeal.

If your LA's decision seems at odds with the evidence, because the evidence you already have shows the legal test is met, then you may not need to look any further than the documents and reports of the LA's own professionals.

If the evidence supports your LA's decision (or doesn't show the legal test has been met) 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. A medical diagnosis (for example of autism or ADHD) can be helpful, but is not essential.

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. Our web page on [where to get help](#) contains further information about this.

Other sources of written evidence may be available from:

- Teachers: ask them to be precise and to set out exactly what support is needed. It is helpful if they 'quantify' the support, which means setting out the amount of time required for each provision. Some settings do this in the form of a 'provision map'.
- Health service, for example a speech therapist, paediatrician, clinical psychologist or occupational therapist may write a report. You can ask your GP for a referral to these services.
- Others involved with your or young person child, for example social workers, youth workers and careers advisers.
- Information from voluntary groups relating to the SEN/disability concerned.
- References to relevant research and findings.
- Extracts from books, magazines etc.
- School/college reports, including results of national tests and assessments.
- The education setting's own assessments and review reports.
- Details of any adjustments or access arrangements made for internal or external exams.

- Home–school diaries.
- Your own evidence: for example, has a younger brother or sister overtaken your child? Are they anxious about going to school? Do they experience bed-wetting, particularly in term time?
- The views of your child or young person. These can be written by a third party where necessary, or in a format easiest for them.
- School/college work if this demonstrates a point you want to make, such as the limited progress being made, or about 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 (often referred to as a ‘spiky profile’) between one particular subject or skill and another.
- Information from the school/college record. You have a legal right to a copy of this. You should put your request in writing to the chair of the governing body at the school or the equivalent for a college. Our [Model Letter 18](#) may help you do this. You may be charged for photocopying. The record includes school/college reports, attendance records and details of any exclusions. If behaviour is a difficulty, the disciplinary record may help you show whether this is getting worse, whether the school and your child needs more help to manage it, and whether there is a pattern.

The Code says LAs should look for evidence of a child or young person’s progress when deciding whether to make an EHC needs assessment. The evidence suggestions listed above may help you to show that your child or young person’s progress is slow or uneven, or that there are complex needs involving more than one difficulty.

The Code says attainment is a factor, but this must be considered in the context of your child or young person’s peers’ attainment, progress over time, and what is expected of your child or young person’s performance. If you can show, for example, that performance in some areas is much lower than other areas or below what your child or young person’s general intelligence indicates is possible, then this should be a factor in deciding whether to assess.

SEN covers a wide range of needs, and a child or young person can be progressing academically but still have difficulties in other areas. The Code sets out four “broad areas of need” which are:

- \* communication and interaction
- \* cognition and learning
- \* social, emotional and mental health difficulties, and

\* sensory and/or physical needs.

More detail about these headings, and the sorts of SEN which could go under them, can be found at paragraphs 6.28 – 6.35 of the Code. Remember the Code is guidance so these are examples, not a prescriptive tick-list; it is fine if your child or young person has needs which are different from or additional to those mentioned in the Code. Some children and young people have needs under each heading and some do not, which is fine too.

#### 4.5 Answering Question 2: Might your child or young person need an EHC plan?

Remember that an EHC plan is only necessary where your child or young person's needs cannot be met by the education setting through SEN Support. You need to explain why that **may** be the case and provide supporting evidence.

At this point, it is a good idea to go back to points 1–3 listed under heading 4.1 on page 6 and set out your reasons using the points that fit your case, giving at least a little detail about why you believe this. We have set out some examples of how you might do this below.

##### Example 1

A full EHC needs assessment is the only way to identify my child's difficulties and find out what he 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 the way he does.

**Example 2**

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

**Example 3**

My college has given me all the help that could be expected but I am not making enough progress. I have received a high level of help for over a year and my progress is still very slow. My peers on my course are much further ahead than me; I am struggling to keep up with them and I am getting further and further behind.

**Example 4**

My child's school has been able to give her all the help that could be expected and she has made progress, but only with a great deal of extra support. Now she is coming up to Year 11 and the college she wants to go to cannot do all the things she needs without getting extra help from my LA.

Now you will need to back up your points with evidence.

In some cases, it will be enough to provide evidence of problems in learning or to show that educators or trainers are having difficulty in understanding the problems and the help that is needed.

However, in most appeals against a refusal to assess, you will need the education setting to provide evidence of what help it has already 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 9.14 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.”

This means that if your child or young person is not making expected progress despite the education setting providing all the help it can, an EHC needs assessment may be the necessary next step.

- **Progress but only with unsustainable support:** If the school or other setting has provided a lot of support which has resulted in progress, but the support given so far is over and above what would normally be provided in mainstream settings without an EHC plan, the Code rightly says this is also a trigger for assessment.
- **Phase Transfer:** Your child or young person may be receiving the required help in the current education setting, but it may not be realistic for this to continue when your child or young person moves settings for a new phase of education (for example, transfer to a college or other post-16 provider which may not have the SEN resources a school has).

Case law has made clear that your LA must consider not only the present situation, but must take into account future changes such as an upcoming change of school.

As well as the help which is provided by the education setting itself, you will need to know what outside help the setting can bring in. For example:

- the LA's educational psychologist
- the LA's behaviour support team
- health service speech therapists, and
- specialist teachers.

You will also need details about your LA's SEN budget and the number of children and young people it covers. Your 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 £6,000 for SEN). However, this amount is a 'notional' one, which means it is not based on an assessment of current pupils' needs and the real cost of providing for them, and in reality, your child or young person's education setting may receive much less than this. 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 the school plans to spend it, to see what it can and cannot do. Colleges are funded differently.

You may not be able to find all this information easily. You could start by asking someone from your child or young person's education setting 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 our [Model Letter 19](#).

Remember that schools are also required to publish an SEN Information Report containing detailed information about the support and policies applicable to children with SEN and disabilities at the school (this is set out in [Schedule 1 to the SEND Regulations 2014](#)). This should be available on the school website.

Remember also that it may be helpful to use [Model Letter 17](#) to ask your LA for details of how much funding it delegates to schools and what help it expects schools to make. (You could revisit section 4.2: What if the education setting could do more?) If there appears to be

a mismatch between what the school is saying it can do and what your LA expects it to do, this may help your case.

#### 4.6 Evidence – general points

It is important to get any written evidence as soon as you can. If you are able to do so, it is best to send in all your written evidence with your appeal form. That way, you have the main points of your case set out with supporting evidence right from the start.

Sending in a good amount of evidence at the start will allow your LA to respond properly, which means you may discover more about your LA's position when it submits its response. If you have a good case and evidence, your LA may give in (or concede) early rather than oppose the appeal.

There will be a 'final evidence deadline' though, so if you think you need to send in evidence later in the process, you can tell the SEND Tribunal what you expect to get and when by. Do make sure to submit everything by the deadline you are given.

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

#### 5. What happens next?

You can find detailed information about the appeals process on our pages about [what happens after you submit your appeal](#).

#### What if my LA decides not to oppose my appeal?

Your LA must usually submit its [response to your appeal](#) to the SEND Tribunal within 30 days, saying whether or not it opposes your appeal.

If your LA changes its mind and agrees to your request for an EHC needs assessment, this is called conceding the appeal. Your LA can concede the appeal before or in/ after the response. If the LA continues to say that it does not think it needs to carry out an EHC needs assessment, then this is called opposing the appeal.

If your LA decides not to oppose your appeal and tells you it is conceding the appeal **before** it sends in its response, your LA will notify the SEND Tribunal in writing that it agrees to what you are asking for and you will be sent a copy of this notification. You do not need to do anything – the notification to the SEND Tribunal automatically ends the appeal.

[Regulation 45](#) of The SEND Regulations 2014 says that if your LA tells the SEND Tribunal it is not going to oppose your appeal, then the appeal is to be treated as though the SEND Tribunal had decided it in your favour.

Your LA must also comply with the deadline set out in SEND Regulation 45(3), which says it must carry out the EHC needs assessment within four weeks of notifying the SEND Tribunal that it is not going to oppose your appeal.

If your LA fails to comply with this deadline, this failure is the same as the LA being in breach of an order of the SEND Tribunal and you can use our [model letter 16](#) to complain.

If your LA decides not to oppose your appeal and tells you it is conceding the appeal **in or after** it sends in its response, you and your LA will need the SEND Tribunal's permission to end the appeal. You and your LA will write up a document setting out what has been agreed and then both sign it. This is called a draft or proposed 'consent order'. The SEND Tribunal has a [template consent order](#) you can use and we recommend that you do. This consent order needs to be sent to the SEND Tribunal for it to consider. If the SEND Tribunal agrees to it the deadlines in [regulation 44 of The SEND Regulations 2014](#) will apply (unless the parties tell the SEND Tribunal they have agreed a shorter timescale).

It is very important that you **do not withdraw your appeal without the proper steps being taken**, as this could result in your LA not having to comply with legal deadlines. More information about this is set out on our page about [settlement or withdrawals of appeals](#). If your LA talks to you about withdrawing your appeal, we would recommend you [get advice](#) before agreeing to anything.

## 6. The hearing

If your LA decides to oppose your appeal, there will be a hearing. If you and your LA both agree, the appeal will be dealt with by way of a '[paper hearing](#)', which means the SEND Tribunal will decide the appeal based on the written evidence submitted by you and your LA, and you will not be required to attend an oral (verbal) hearing.

Most refusal to assess appeals are now dealt with in this way, because these appeals are fairly straightforward due to of the low 'bar' in the legal test. In the vast majority of cases there would appear to be no advantage in an oral hearing, and agreeing to a paper hearing can mean your appeal is looked at and decided quicker. Generally speaking, requesting an oral hearing will mean a longer wait for a hearing date so it is likely to increase the time taken to reach a decision in your case, rather than it resulting in a different outcome. An oral hearing might be appropriate where, for example, there is genuine dispute as to whether your child or young person has special educational needs, or where the experts disagree about the type of the special educational provision required.

In either type of hearing, the SEND Tribunal will look at the evidence you and your LA put before it, and decide whether your LA followed the law and the Code when deciding not to assess. It will also make a decision based on what is right for your child or young person at the date of the hearing. Remember, the SEND Tribunal makes decisions based on the law, which is made up of the CFA 2014, The SEND Regulations 2014 and SEN and disability case law. The SEND Tribunal does not expect sophisticated legal arguments or references

to case law. However there are some useful case law summaries which you may find helpful on [case law page](#).

## 7. Outcomes of an appeal against a refusal to conduct an EHC needs assessment

There are limits to what the SEND Tribunal can decide in a refusal to assess appeal.

**If your appeal is successful**, it can order your LA to carry out an EHC needs assessment. It cannot order the LA to draw up an EHC plan or make orders about what a plan should say. It cannot make any orders or recommendations with regard to health and/or social care.

Your LA must start the assessment process within two weeks of the Tribunal's order. Our website contains helpful pages on [what happens in an EHC needs assessment](#),

**If your appeal is not successful**, your LA will not have to carry out an EHC needs assessment. The SEND Tribunal cannot order a school to make provision through SEN Support if it decides that an EHC needs assessment is not needed. However, the school should continue to support your child through the SEN Support framework. If the education setting is not doing its best to provide the necessary support, you can use our [model letter 21](#) to complain.

You can start another request for assessment immediately, but you are unlikely to get a different outcome unless you can show that things have changed, or that new evidence is available. You should keep careful records over the coming months of the support that your child is receiving, the progress they are making, and the difficulties they are experiencing, so that you will have the evidence to support a new request if necessary.