Refusal to Assess Guide

Options after a 'Refusal to Assess' decision

Please note: 'child' = 'child or young person'

If you have just received a refusal from the Local Authority to undertake an Education, Health & Care Needs Assessment (EHCNA) following a request by yourself, your young person or the school, this guide will explain the different options available and what you need to consider. This refusal is usually known as a Refusal to Assess (RTA) decision

Introduction

The local authority (LA) should decide whether to undertake an EHCNA within six weeks of the initial EHCNA request* and you should receive notice of its decision, in writing (even if this is after an initial phone call and even if it was the education setting that made the initial request – all correspondence will be direct to you, with school (if applicable) copied in).

If the LA has decided NOT to do an EHC needs Assessment, it is required to give you information about why they are refusing to assess, along with your right to appeal, the time limits for doing so, information about mediation and disagreement resolution and information and advice about matters relating to the special educational needs of children and young people. (Send Regs 2014 5(3))

** There are specific exceptions to this – Summer holidays, exceptional personal circumstances, being absent from the area of the authority for a continuous period of 4 weeks or more.*

If the LA has not included all of these in its explanation, we would advise contacting the person who wrote to you (your SEND Officer/Caseworker) and request the missing information.

If despite their explanation, you disagree with the decision there are three main options to consider:

Option 1: Request an Informal meeting with the LA
Option 2: Request formal Mediation
Option 3: Submit an Appeal to the SEND Tribunal

In considering whether to do anything about the decision, it is helpful to revisit the two legal tests within the Children & Families Act 2014 that the LA has to consider:

> s. 36(8) states that the Local Authority (LA) must undertake an EHC Needs Assessment if, having seen the views and evidence, they are 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.

If you feel that the legal tests were met, we advise that you liaise with the SENCO at your child's education setting (if applicable) as soon as possible, to discuss the reasons for the LA's decision not to undertake an EHC Needs Assessment and how that fits with the legal tests above.

There may be some additional considerations, like providing more information/evidence to SENAT or school making further provision (from within their own resources), even if temporarily, whilst other options are being looked at.

However, if despite doing this, you feel the LA was wrong in its decision not to undertake an EHC needs assessment then there are a few options to consider.

Option 1: Request a meeting with the LA and school.

This can be done whilst also pursuing Options 2 or 3 (but be careful not to miss any mediation / appeal deadlines if this is something you may be also considering).

You can ask your SEND Officer/Caseworker to organise someone from the LA to meet with you and your child's school/early years provider/ further education setting to discuss the reasons for the refusal more fully. If there is an age phase transition, then the SENCO from the new school should also be included. This may be particularly helpful if the setting agrees with the EHCNA request (or made the request themselves) and/or you think that the paperwork submitted in the request does not fully reflect your child or young person's needs.

Occasionally, the LA may suggest the meeting when it tells you that the EHCNA request has been refused. This may be known as a 'Way Forward Meeting' or 'Inclusive Planning Meeting' (IPM) and would be offered if the EHCNA decision panel feel that more investigation is required i.e. if school have not supplied a lot of information etc. This may be done virtually and by a SENAT representative.

Please note: this is NOT a formal mediation meeting, and you will need to keep an eye on appeal / mediation dates to make sure they are not missed if it is needed. More about timings is mentioned below.

A face-to-face meeting (either in person or virtual) can be helpful to explain a child's needs more comprehensively, especially where you have not been able to get assessments or reports from the relevant professionals. The school also get opportunity to explain why they cannot give more or different support.

As well as the chance to discuss the decision, there should also be opportunity to discuss what the next steps are. The LA may talk with the education setting about further assessments that could be done themselves, further support that could be offered, or further evidence that may be needed.

How to request:
Contact your SEND Officer (if by phone, then follow up with an email) and request a meeting. In the Subject Header put something like "EHCNA RTA Request for meeting" Their contact details will be on the letter that you received informing you of their decision not to undertake an EHC needs Assessment.

Things to consider:

- The LA does not have a duty to meet with you.
- There is no timeframe for meeting or for any decisions or actions to be made

- You can request a friend/family member/ professional to attend with you
- The LA representative may need to go back to the EHCNA decision panel for a further decision to be made (you will be informed of timings)

Afterwards:
The LA may decide to take the request back to panel, you may decide to wait a while to see if there are any improvements to your child's learning and/or wellbeing (you can make a new EHCNA request at any point if there is new or additional evidence not already seen by panel). Alternatively, you may decide to go to mediation or appeal.

Please note: Even if the request is being taken back to panel, in order to request mediation or if you need to appeal (and therefore need a mediation certificate), you ***must*** call Global Mediation (Global) within two months of the date on the Decision Letter you received from the LA refusing to assess. If despite having a mediation certificate or requesting mediation, the LA agrees to an EHCNA, there would be no need for mediation or appeal.

Option 2: Consider Mediation

Mediation can be done before or instead of Option 3 and is a formal version of Option 1 both of which are potentially much quicker than an appeal.

Mediation advice ***must*** be considered (but does not have to be requested) if you are intending to go to appeal (Option 3). If going to mediation or appeal, then you must contact Global **within 2 months of the date on the LA's RTA Decision Letter**.

Mediation is confidential and aims to resolve your disagreements with the LA (within 30 days of the request) using a qualified impartial mediator, to help you reach a resolution. The school is not usually involved in the mediation meeting. The mediator will explain the process and help clarify the disagreement between both parties. You can bring a supporter with you. Legal representation is not necessary.

Mediation can be an opportunity to present further evidence that you feel has been missed/overlooked. The reasoning and evidence you will need to provide will be similar to that in Section 2 of the appeal form in considering the two legal tests.

Who to contact for Mediation:
Global Mediation: sen@globalmediation.co.uk or 0800 064 4488 or 020 8441 1355. If requesting mediation, Global will make the arrangements.

Things to consider:
- Whilst Global will usually try to arrange the meeting near to your home, in a neutral place, there may be some travelling involved.
- Schools are not generally involved with mediation.
- The LA has a '***must***' arrange duty. If it does not agree to mediation or fails to arrange it in time, you will be issued with an emailed certificate by Global. If you then decide to submit an appeal, this certificate must be sent to Tribunal with the rest of your appeal paperwork (see Option 3).
- The LA representative at mediation should have the authority to agree to undertake an EHCNA (rather than have to go back to panel).

Afterwards:
After the mediation meeting, Global will issue a certificate within 3 working days confirming that mediation has concluded. If despite mediation, you feel that all your issues have not been resolved, you can appeal, (see Option 3).

Option 3. Submit an Appeal to the SEND Tribunal

This can be done after or instead of Option 2, or after / alongside Option 1.

If you disagree with the LA's decision not to undertake an EHCNA (despite trying to resolve with the LA), you can appeal this decision directly to the SEND Tribunal.

The appeal for an RTA appeal is considered on written evidence only (known as 'on the papers') and you will not attend an oral hearing (remote or in person). If you feel an oral hearing is needed, you can make a request to the judge using the appeal form.

How and when to appeal:
You ***must*** have contacted Global to consider mediation within two months from the date on the LA's RTA Decision Letter. If you decide to go straight to appeal, you will be issued with a Mediation Certificate within a few days of your contact with Global. This certificate will need to be submitted along with your appeal form and evidence.

**You must submit your appeal within 2 months from the date on the LA's RTA Decision Letter or 1 month from the date of the mediation certificate, whichever is the later. The email address can be found on the appeal form.

Considerations:
- RTA appeals are taking several months to be heard 'on the papers' and much longer for oral hearings.
- Where the hearing is made 'on the paper' evidence only, you will not get to verbally discuss the situation or the decision.
- Any decision the tribunal makes in your favour must be adhered to by the LA within strict timelines ordered by tribunal

Afterwards:
After the SEND Tribunal considers your case, they will write to you setting out the decision along with the reasons why. This may include recommendations (but these will be clear and give appropriate timings for completion) If the tribunal decides in your favour, the LA has **4 weeks** to begin the EHCNA.

If you feel there has been an error or have some other serious reason for thinking the decision by the SEND Tribunal is wrong, you have **28 days** to apply for a review.

If the tribunal ruled against an EHCNA, you can re-request at any point, particularly where you feel there is more evidence to submit. However, we would advise giving any recommended actions time to see if they make a positive difference.

For further information see other guidance and FAQs on our Practical Guide page

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