Refusal to Assess Practical Guide

What to include in Section 2 (of an RTA appeal Form)

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

If you have decided to appeal the Local Authority's (LA) decision not to undertake an EHC Needs Assessment (EHCNA), you need to tell the SEND Tribunal ***why*** you disagree and refer to any written evidence you have to support your case. The place to do this is in section 2 of the SEND35a appeal form.

There are two legal tests within the Children & Families Act 2014 that have to be considered by the LA.

> 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.

Your responses to the questions in Section 2 explain why you feel the LA is wrong in one or both of these two legal tests.

Question one – Whether the child or young person has or may have SEN

a. Describe any special educational needs that the child or young person has:
b. Describe any special educational needs which you consider the child or young person may have which have not yet been fully identified:

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

a. Explain why you think the child or young person ***may*** require an EHC plan:

QUESTION ONE

a. Describe any Special Educational Needs that the child or young person has

Your answer must include any needs (difficulties) and/or barriers your child has in learning or accessing learning. These don't have to be diagnosed but will usually have been identified, either by school or a professional. Please refer to our guides on requesting an EHCNA for more detailed information about this.

SEN may include (but is not limited to):

- Autism (ASC/ASD) and/or ADHD / Autistic traits and/or ADHD traits
- General Learning difficulties
- Social Communication difficulties
- Sensory processing issues
- Speech and Language difficulties
- Severe Anxiety

- Demand Avoidant Profile
- Specific Learning Difficulties (Dyslexia, DCD, Dyscalculia etc.)

If you wrote the initial EHCNA request, you may want to copy and paste straight from the request into this section. If the school wrote the request, you could ask the school to give you the information they sent to use.

It is helpful if you list the SEN under the four general categories (but it is not a requirement, so don't worry if this makes things more complicated for you):

1. Cognition & Learning
2. Communication & Interaction
3. Social, Emotional & Mental Health
4. Sensory and/or Physical Difficulties

Use bullet points where possible to list your child's learning needs, with a brief explanation of what this looks like for your child or young person.

For example:

- XX has Autism/ADHD - diagnosed on xx/xx/xx by xx which shows they struggle with sensory difficulties especially too much noise, Social Communication which… etc
- XX shows Dyslexic Traits - Identified by xx (school) via assessment on xx/xx/xx which shows they struggle with xx, xx
- XX has speech and language difficulties – they are non-verbal, stutter, use pecs, sign language etc.

Do explain –

- How your child focuses, interacts, follows instructions etc
- Worries about learning
- Sensitivities
- Struggles to manage behaviours and emotions
- If they have been excluded or are on a part time timetable.

Do **not** –

- Include years and years of history, be concise and include only relevant history. However, it is helpful for the tribunal to know how long SEN has been suspected / confirmed and how long support has been in place for, so include a brief but relevant timeline.
- Use the appeal as an opportunity to blame teachers, schools and services for lack of support or diagnosis. Keep to what has been identified (and/ or diagnosed) and what you suspect may still need to be identified and why.

b. Describe any SEN which you consider the child or young person which have not yet been fully identified

The second part of this question allows space to tell the tribunal about your concerns around any unidentified learning needs. This will usually be concerns that you as a parent carer have (rather than a professional).

If you feel you don't have anything to write in this part just leave blank or write 'N/A'. (not applicable)

Examples might be:

- You may be waiting for a specialist assessment ie CAMHS or CDC etc. You can write here why your child was referred.
- You may suspect such SEN as dyslexia, but school will not do the internal assessments or have only done basic testing.
- Maybe your child presents differently in their learning setting and so all the professional evidence does not fully show what happens at home.

Where you can and it is appropriate, **quote your child's words** about how they feel when trying to learn etc. Please refer to our Effective Communication factsheet for tips on this if needed. (If these needs were fully identified and understood and therefore supported appropriately, the behaviours/ difficulties may possibly decrease).

If you haven't included these in Question 1a, list and explain which specialist services are involved in advising you or the school. Also include whether any of these professionals will be further assessing your child and/ or creating assessment reports to advise on your child's needs and provision.

Examples:

- XX is not disruptive at school but does not cope well with the classroom situation and learning styles. Not able to cope with eating lunch with interacting with peers/working in large groups etc.
- XX lacks confidence/gets anxious around schoolwork - doesn't understand/can't start or finish the work. Certain lessons are a particular difficulty.
- XX is socially isolated in school/cannot understand or return usual social cues. Rarely interacts with/takes part in whole class activities etc.
- XX is very introverted/masks OR is very verbal and disruptive in school. Finds it hard to interact with others due to social and communication skills at a lower level than peers, takes things literally and personally, causing distress.
- XX struggles to cope with sensory/behaviour outside the house. Has …. anxieties/phobias. (What does this look like)?
- XX struggles to eat/drink/got to the toilet etc. due to dietary or medical needs which impacts on the time spent in class.
- When XX comes out of school, they meltdown/shutdown (explain what this looks like and how they recover).
- XX struggles with severe anxiety and struggles to attend school. When I am able to get them there, XX does not attend many lessons as they become very dysregulated.

QUESTION TWO

Whether the child or young person *may* require an EHC Plan (EHCP)

Explain your reasons. The important word in this part is '***may'*.**

The tribunal will want to know why you feel that SEN Support is not enough.

If, the school are doing all they can ('best endeavours' duty) but the pupil's needs are still not fully identified, or the support being given is not helping outcomes or progress, then the need for an EHCP cannot be ruled out and the LA should agree to do an EHCNA.

Do **not** –

- Use the appeal to blame teachers and schools for lack of support and wanting the EHCP to 'make up' for this failure. (Any failure of a school to fulfil their 'best endeavours' duty should be addressed through the school's complaint process).

Do –

- Keep it factual and concise as much as possible.
- Refer to as much relevant evidence as you can, for example:
    - 'The last 4 ISPs show that XX has not met his outcomes despite having a designated 1:1 and frequent reviews and with support being changed.
    - The costed provision map shows that £6,000 of support is already being given (and has been for the past 2 years) and it is therefore likely that extra support will be needed through the provision of an EHCP.

Further examples of what to include may be:

- The setting needs to give more support than they should be expected to provide from their own resources. Include Costed Provision map to show that the school are already providing £6,000 worth of support or reasons why this is not possible.
- A totally different type of specialist support or environment is needed than that of a mainstream school. I.e: staying in the same classroom, being taught in a small environment, having regular therapies, reduced sensory input etc. (EHCPs are required for special schools). Use learning plans, communications, reports etc showing that the environment itself will not be able to fully support your child or young person.
- They are on a part time timetable because school say your child / young person cannot cope. Include relevant meeting notes, emails, support plans
- They have been given regular fixed term exclusions or are now permanently excluded because they struggle with the rules or are constantly in fight, flight or freeze mode? Include communication / letters / reports that indicate this is due to their SEN and despite SEN support being given, it is not changing things.
- Support has been delayed to such a point that your child is now at crisis point and therefore no amount of 'SEN Support' is going to help them to the extent they need? Include learning plans, communications, reports showing recommendations
- Your child is at a crucial transition stage and therefore more or different support will be needed at the next stage. (The LA do have a duty to be anticipatory in their considerations). Show that the provision offered by the new setting, will be insufficient to meet their needs, without extra financial support through the LA (by way of an EHCP). Ask new setting to put explanation in writing.
- An EHCNA is required to fully identify the extent of the special educational needs and what type of SEN provision child requires to meet those needs appropriately, so they can access schooling and make progress educationally. Without this, no-one really knows how to support your child or young person appropriately, despite doing all they can. List all the services and professionals that school have approached to try and identify need, and what the outcome was from these. School should be able to able to provide you with this.

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

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