



### Appeal Process –How to complete the SEND 35a Form (for a Refusal to Assess Appeal)

With acknowledgement to Surrey IAS: <https://sendadvice.surrey.org.uk/refusal-to-assess-appeal-form/>

#### Page 1 – Front page

This gives you useful information regarding the tribunal process and how to complete the form. Do read it carefully. This page talks about 'Who can bring an appeal', 'Who can be an advocate?' and 'Who can be a representative'.

#### Page 2

The whole form MUST be completed in BLOCK CAPITALS unless it tells you otherwise or if you are completing the form – remember to save it first!

#### Section 1: Who the appeal is about?

Please complete child/young person's details (who the appeal is for).

#### Page 3

#### Section 2: Reasons for appeal

This is where you tell the Tribunal why you disagree with the LA's decision not to secure an EHC assessment and refer to any written evidence you have to support your case.

Remember that the Legal Test the Tribunal will apply is contained within the Children and Families Act 2014 Section 36(8):

***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 (7), 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.***

In this section there are two questions to answer:

1. Whether the child or young person has or may have SEN?

First box: here you need to describe any special educational needs that the child or young person has.

Second box: describe any special educational needs which you consider your child or young person may have which have not yet been fully identified.

2. Whether the child or young person may require an EHC plan?

Here you would explain why you think your child or young person may require an EHCP. You can also explain why your child's School cannot meet your child's needs within their local offer. You can ask this question to the SENCo and/or class teacher and include their answer in this section as well as including any evidence they give you with this form.

Please note that you can continue on a separate page if you need too.

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#### **Section 3: Making the appeal**

There are two questions under this section:

1. Which local authority made the decision that you are appealing against?
2. What is the date on the decision letter from the local authority?

#### **Late appeals**

Late appeals: (The next part of page 4 is to be used if you are late appealing or have no mediation certificate.)

If your letter was posted you could also ask for a copy to be emailed to you so you have it to email with your SEND 35a form rather than posting it.



If you do not have this letter you must email your Case Officer to get a copy. You can ask for a copy to be emailed to you. You must not send off your SEND35a without a copy of this letter as it will only be returned and will delay your appeal.

This is the date on the letter you got from the LA when they said they are not going to assess. It is not the date it arrived with you.

You are only late appealing if you are later than 2 months from the date of the LA's decision letter or later than one month of the date of the mediation certificate.

In the box you must write the reasons for the delay in appealing and why you think the appeal would succeed if time for making the appeal is extended.

It is important to do this otherwise the papers will be returned to you without being registered or seen by a Tribunal Judge. Reasons maybe because you didn't understand the process as you have a learning difficulty, the letter never arrived in the post, you have been ill or a member of the family has been seriously ill. If you have any medical evidence for this, send a copy in with the SEND 35a.

### No mediation certificate

If you do not have a mediation certificate you must write why you have not been able to get one. The same reasons as outlined above may apply.

If you do not give an explanation, the papers will be returned to you without being registered or seen by a Tribunal Judge and will delay the appeals process.

Tick the box that applies and then write your reasons below.

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#### Section 4: Deciding your appeal

The first box is to be ticked if you 'DO NOT agree to a paper hearing and wish to attend an oral hearing', you will also have to explain the reasons for not agreeing to a paper hearing in the box. A Judge will need this information to consider whether an oral hearing will go ahead.



Refusals to Assess hearings are normally paper hearings only. This means that the Court will try to fast track these types of appeals to ensure a quicker decision.

**IF** you want and get an oral hearing you could have to wait for 20 weeks for it to be heard.

A paper hearing is when all the written evidence is considered by the Judge.

The next box is for Existing claims/appeals:

You need to say whether there is another appeal being dealt with by Tribunal in relation to this child or young person or a sibling. If the answer is yes, write your appeal number in the box.

Then state whether you have an existing Disability Discrimination Claim for this child or Young Person registered with the Tribunal – yes or no.

If yes, then give the date of your claim and hearing number in the next boxes. You can also tick if you would you like these appeals/claims to be heard at the same time.

If no, remember to tick the box as it's hard to see if within the boxes above.

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#### **Section 5: Who is making the appeal?**

You need to tick one of the boxes depending on who is making this application to appeal. There are explanations on page 1 if you need them:

- 1) Parent or other – on behalf of a child under 16 years old
- 2) Young Person – aged 16 and under 25 years old
- 3) Alternative Person – making an appeal in the 'best interests' of a young person who does not have the Mental Capacity to bring an appeal themselves.



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#### **Section 6: Who else is involved in the appeal?**

There are three boxes on this page.

1. To be ticked if any other person or organisation shares parental responsibility for the child or has been appointed as a Deputy by the Court of Protection for a Young Person.

You need to give their name and contact details and confirm that you have notified them of the appeal.

2. The second box is to be used if you believe the people above should not receive details of the Appeal. You also need to explain why not.

The last box is to be used if any other court or tribunal has made an order concerning the child or young person this application is about. This would include the family court. You must provide their details too

The last section on this page is about Your Advocate.

An advocate is someone who knows you, who understands what you think about the issues in the appeal and so can speak on your behalf. The advocate is there to support you to express your views.

For a young person, the advocate can be a parent, family member, friend or a paid advocate. If a parent is disabled, they may also be able to have an advocate.

An advocate is not someone who can give advice on the issues in the appeal.

### **Page 8**

This page is about Your representative.

The first question is basically if you have appointed a representative to support you in making the appeal – yes or no. If yes you need to complete their details and if no you move on.



A representative is someone who will give you advice on the issues in the appeal, prepare the paperwork on your behalf and may represent you at the Tribunal hearing. They can also be an advocate. They could be a volunteer from a charity, a paid representative, a solicitor or barrister. SENDIAS can also be your representative if we have capacity AND if we have been working with you from the beginning so understand the appeal in detail.

You then need to say - Who should receive information about the appeal?

The papers and documents only go to one of the people named on this form. If you have a representative they will automatically go to them so that person will have to send them onto you. You must use this section to tick whether you want the papers and documents to go to your Advocate or Representative. If you don't have either everything will be sent to you directly.

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#### **Section 7: The hearing – your needs and requirements**

This section has two questions to answer. You need to say whether you have any special needs which the tribunal needs to take into account when they arrange your hearing. This might be things such as hearing loops or disabled access.

The court will then arrange for a professional interpreter to be present at the hearing if an oral hearing goes ahead.

#### **Question 1 – your needs**

Tick yes or no.

#### **Question 2 – your signer or interpreter and language requirements**

Tick yes or no to “do you require an interpreter or signer to assist you at the hearing?”.

If yes, it then asked what language or type of sign language interpreter you need and what dialect it is. Just write the answer to each question in the boxes.



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### Section 8: Checklist

You need to confirm that the following documentation are enclosed with the appeal form:

- A signed and dated letter from the Local Authority giving you the right of appeal to HM Courts & Tribunals Service – this is the LA's decision letter. If it was posted to you, you could email your case officer to ask for a copy to be emailed to you or you could scan the letter so you have an electronic copy.
- A copy of the signed mediation certificate – this is the certificate you would have received from Collis Mediation when you called them. You had 2 months from the letter above to get this certificate.
- Your reasons for making the appeal – see our guidance called “Appeals Process – Refusal to Assess”.

This can include the paperwork you sent in with the EHC Needs Assessment and the Request Form as well as any new reports / letters / advice from professionals that you may have received since submitting the original request for assessment to the LA.

It is important to obtain any written evidence as soon as you can. It is best to send in all your written evidence with your appeal form because this means you have the main substance of the case set out with supporting evidence right from the beginning. If you have a good case and evidence, the LA may give in rather than fight the appeal.

If you think you need to send in evidence later in the process, tell the SEND Tribunal what you expect to obtain and when and submit it by the deadline you will be given.

Any relevant reports or evidence that you are expecting to arrive soon after you have got your appeal in can be listed on page 11 of your SEND 35a application.



If you are having difficulty getting information from the LA, you can write to the SEND Tribunal explaining what the document is and ask the SEND Tribunal for a 'direction' to make the LA release the document. (When we say "write" you complete a 'Request for Changes' form. Unless the LA has a good reason for not providing the document the SEND Tribunal will order the LA to release it.

The appeal form has been signed and dated – people forget to do this and their forms are returned. It means your appeal will not be registered and will be delayed.

### Section 9: Please sign below

This is the section you sign and date – as mentioned above!

If you are sending your appeal via email (the quickest way to do it) you can type your name in the signature box.

Your representative also signs the form (or types their name if the form is being emailed).

### Page 10

#### Section 10: Sending us your appeal

When you have completed the appeal form and signed it you need to send it and all other relevant documents. You can either email it all or post it all:

**Email:** [send@hmcts.gsi.gov.uk](mailto:send@hmcts.gsi.gov.uk) and write in the subject line 'New Appeal'.

**Post:**

HM Courts & Tribunals Service

Special Educational Needs and Disability Tribunal

1st Floor, Darlington Magistrates Court

Parkgate

Darlington DL1 1RU





### **Page 11**

#### **Section 11: Evidence to be considered in the appeal**

On this page you need to list all the documents you are sending with this appeal, the date of each document and number of pages (every page that has writing on it is counted as one), who wrote the document (its author, if known) and why the document is relevant.

The type of evidence should include:

- Any document which helps the Tribunal to understand your child/young person's special educational needs (e.g. a relevant medical report, an assessment by a therapist or psychologist)
- Documents provided by their school or college setting out any support your child/young person receives (e.g. SEN Support Plan, Behavioural Support Plan, notes from any meetings with professionals)
- Correspondence with their school or college about any issues (e.g. part-time timetable, exclusions)
- Other educational documents recording the level that your child/young person is working at or progress they have been making (e.g. latest school report)
- Other documents (e.g. a statement from another parent, another organisation).

Remember to list any relevant reports or evidence that you are expecting to arrive soon after you have got your appeal in in this section. You should note when you are expecting them to arrive.

Remember to never send the original documents (copies only) and to keep a copy of everything that is being sent. Add a delivery and/or read receipt to an email and if sending by post – think about sending recorded delivery.