



WIASS

Wolverhampton Information, Advice and Support Service

Appealing Education Health and Care Plan (EHCP) decisions A guide for parents, carers and young people aged 16-24

Wolverhampton Information, Advice and Support Service (WIASS) aims to support parents, carers and young people to resolve disagreements in relation to special educational needs and/or disability and help you move forward. You can find out more about resolving disagreements on our website <https://wolvesiass.org/how-to-resolve-disagreements.html>

At any stage we encourage you to speak with your local authority (LA) SEND Officer to try to resolve any issues and concerns.

You have a **right to appeal** to the **SEND Tribunal** on the following:

- the decision not to conduct an EHC needs assessment or re-assessment
- the decision not to issue an EHCP
- the contents of parts B, F or I* of the final EHCP i.e. the parts relating to special educational needs and provision
- the decision not to amend an EHCP following an annual review or re-assessment
- the decision to cease an EHCP

You have two months to request an appeal from the date of the LA's decision letter and you must consider mediation unless your appeal is for section I placement only.

* For section I appeal for placements the law states that the local authority must secure the school or setting requested within the EHCP, unless:

- “(a) the school or other institution requested is unsuitable for the age, ability, aptitude or special educational needs of the child or young person concerned, or
- (b) the attendance of the child or young person at the requested school or other institution would be incompatible with
- (i) the provision of efficient education for others, or
 - (ii) the efficient use of resources.”

(Children and Families Act section 39 (4))

Your preferred of placement must be one of the following:

- a maintained school;
- a maintained nursery school;
- an Academy;
- an institution within the further education sector in England;
- a non-maintained special school;
- an institution approved by the Secretary of State under section 41 (independent special schools and special post 16 institutions: approval).

(Children and Families Act section 38 (3))

FACTSHEET

Mediation

In most cases, you must consider mediation before you appeal to the tribunal. Mediation is when an impartial professional (the mediator) helps both sides work out an agreement.

You do not have to consider mediation if your appeal is only about the school/setting or type of school/setting in section I of the EHCP.

You can find out more about mediation on the IPSEA Website

<https://www.ipsea.org.uk/mediation>

Appealing to SEND Tribunal.

You can appeal to the SEND Tribunal if you are unhappy with a decision the LA has made in relation to an Education, Health and Care needs assessment or an EHCP. There are no fees for making an appeal or a claim, and you may be eligible for legal aid to provide legal help in preparing your case.

The SEND Tribunal has the power to order the LA to carry out Education, Health and Care needs assessments, issue an EHCP and amend an existing EHCP. The LA must comply with orders made by the SEND Tribunal. If it is asked to do so, the SEND Tribunal can make recommendations for contents in the health and social care sections of the EHCP.

You will need to complete the appropriate appeal form which for most appeals is SEND35. For a refusal to assess appeal complete SEND35A.

<https://www.gov.uk/government/collections/special-educational-needs-and-disability-tribunal-forms>

Make sure you have all the information you need, and the reason why you are appealing. This includes the EHCP (if you have one) and the information gathered for the assessment. It may also include Ofsted inspection reports and information on schools if you are appealing the placement named in section I. You must include a mediation certificate with your appeal application unless you are only appealing the section I placement.

The **IPSEA website** has further information and guidance for the different types of appeal and what to include in your paperwork. <https://www.ipsea.org.uk/appealing-to-the-send-tribunal>

Remember the appeal application must be made within the two months of the decision letter or within one month after a mediation certificate.

The appeal hearing is arranged and set out to be as parent friendly as possible. The SEND Tribunal has produced the following **videos** which may be helpful.

https://www.youtube.com/playlist?list=PLORVvk_w75PxU3wF72j3jLYqGqISyMhZ4

Legal aid

If you are on a low income or receiving certain types of benefits, you may be eligible for legal aid. In some cases, a young person may qualify for legal aid in their own right. You can check if you are eligible for legal aid on the Government website <https://www.gov.uk/check-legal-aid>

If you do not have legal aid or any form of legal representation WIASSE can help you navigate the appeal system, understand paperwork from the SEND Tribunal and help you prepare your case. WIASSE cannot provide legal representation for an appeal hearing.

Please contact us if you require further information, advice or support.

Telephone: **01902 556945** | Email: ias.service@wolverhampton.gov.uk

Complete our contact form at: <https://wolvesiass.org/contact-us/index.html>