

**Buckinghamshire  
SENDIAS  
Online Training**



**What to do  
when an EHC  
needs  
assessment  
has not been  
agreed**

- **Summary:** This webinar should help you to understand what steps you can take if the Local Authority have decided not to carry out an EHC needs assessment for your child or young person.
- **Duration:** 30 minutes

# Do you have the right to appeal to Tribunal?

- Do you have a decision letter from the Local Authority, stating they have decided not to carry out an EHC needs assessment?
- Was the letter sent less than 2 months ago?
- You have 2 months from the date of the decision letter to challenge the decision

# How to decide whether to challenge the refusal to assess decision

You may want to challenge the decision if:

- the local authority has not mentioned the legal test in their decision
- the local authority has not mentioned the evidence it has used to make the decision
- and/or has not used all the evidence to make the decision
- and/or has used old or irrelevant evidence

**Think about whether your child or young person meets the legal test**

# Some things to think about when considering whether to challenge the refusal to assess decision

- Is your child or young person getting a high level of SEN support and not making progress
- Does your child or young person need more support than they are getting? Have you met with the education provider and asked for more help? What is their response?
- You may want to work with the education provider to make sure the SEN Support plan is as good as it can be. You can make another request if you want to, or you can challenge the original decision
- If your child or young person is making progress and having their needs met by SEN Support- you may want to accept the decision and carry on working with the education provider to make sure the SEN Support plan is as good as it can be.
- If you decide to do this, you can make a new EHC request at any point



**What does  
the law  
say?**

**Your Local Authority must consider 2 things:**

**1) whether your child has or *may* have special educational needs**

**2) whether they *may* need special educational provision to be made through an EHC plan**



**What does  
the law  
say?**

There is a 3<sup>rd</sup> test the LA must consider if the young person is over 18 years old

*“the local authority must consider whether the **young person requires additional time**, in comparison to the majority of others of the same age who do not have special educational needs, to complete their education or training”*



**What does  
the SEND  
Code of  
Practice  
say?**

*“.....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”*



**Steps you  
can take:**

**Informal**

**Formal**

[Appealing | Buckinghamshire Council](#)

# Steps you can take:

## Informal

- Talking to your Education, Health and Care Coordinator
- Taking part in a Way Forward meeting

[Appealing | Buckinghamshire Council](#)

Steps you  
can take:

## Formal

- Mediation
- Appeal to the SEND First Tier Tribunal

[Appealing | Buckinghamshire Council](#)

# What are my deadlines?

To formally challenge the Local Authority's decision, you must contact Global Mediation

You must do this within 2 months of the date of your decision letter from the Local Authority

# The Mediation Adviser will ask you if you want:

- A mediation meeting followed by a mediation certificate or just a mediation certificate
- You do not have to agree to have a mediation meeting
- If you decide not to have a mediation meeting you will be issued straightaway with a mediation certificate
- If you decide to go ahead with mediation, then this should be arranged within 30 days from your call with Global Mediation
- You must be given at least 5 days' notice of the date/time of the mediation
- You will receive a mediation certificate within a day or so after the mediation meeting
- Once you have your mediation certificate, if you still want to challenge the decision, lodge an appeal

# Mediation agreement

Regulations 42 and 44 of the Special Educational Needs and Disability (“SEND”) Regulations 2014 set out certain timescales that an LA must stick to after a mediation if the mediation agreement does not include deadlines.

If it has agreed **to carry out an EHC needs assessment**

within 2 weeks the LA must notify the parent or young person that it is starting, then either let the parent or young person know it has decided not to issue an EHC plan within 10 weeks, or send a finalised EHC plan within 14 weeks, of the mediation agreement.

# What if mediation doesn't resolve all my concerns?

- You could submit another EHC needs assessment request  
[EHC needs assessments | Buckinghamshire Council](#)
- You could submit an appeal to the First Tier SEND Tribunal  
[Appealing | Buckinghamshire Council](#)

You have 2 months from the date of the LA's decision letter or 1 month from the date of the mediation certificate to register an appeal, whichever is later

# Filling in the Tribunal appeal form

If you decide to appeal, you will need to complete and submit the SEND35a appeal form.

SEND35a Special Educational Needs and Disability Tribunal appeal a refusal to secure an EHC Needs Assessment.

Appealing | Buckinghamshire Council



# What happens after I submit my appeal?

[What happens after I submit my appeal? | \(IPSEA\) Independent Provider of Special Education Advice](#)

# The hearing

This type of appeal will be decided by the Tribunal only based on the paperwork you and the local authority send them.

There is no face-to-face hearing for you to attend - unless you specifically ask for this, and this is agreed. In most cases, this is not necessary.

# Building your case

- Look at the legal test
- Look at the Local Authority's reason for their decision
- Look at what your child or young person's special educational needs are
- Look at what provision your child or young person may require
- Provide evidence to support this

Preparing the case before the hearing |  
(IPSEA) Independent Provider of Special Education Advice

# The child or young person has or may have SEN

Explain why you think that your child has, or may have, special educational needs, and back this up with evidence: What is SEND?

Needs can cover any area of SEN:

- Communication and Interaction
- Cognition and Learning
- Social, Emotional and Mental Health
- Sensory and Physical
- Independence and Community Involvement

Explain the impact of these needs in their everyday life - give examples

# Types of special educational need

Special Educational Needs can be any difficulty which affects your child's learning . Think about whether your child has any of these difficulties:

- Difficulties with understanding information, memory, reading – called **Cognition and Learning** difficulties
- Difficulties with speaking, listening, understanding other people – called **Communication and Interaction** difficulties
- Difficulties with parts of the body – e.g. mobility or hearing difficulties – called **Physical and Sensory** difficulties
- Difficulties with relationships and behaviour – called **Social, Emotional and Mental Health** difficulties.
- Difficulties with doing things for oneself – called **Independence** difficulties.

# Describing your child's special educational needs

Describe your child's special educational needs:

- Say what is difficult for your child, for example, stopping an activity when it is time to move on
- Say how frequently the difficulty occurs, for example any time she is engaged in an activity, such as washing hands, playing with train set - or for example, once a week when it is her favourite activity
- Say what the level/scale of the difficulty is, for example, uncontrollable shouting/screaming/crying lasting X time, resists physically, runs away, hides, visibly upset
- Say how the difficulties act as a barrier to access the curriculum/ to achieve the best possible educational and other outcomes. For example, she isn't able to listen to instructions, she often has to be removed from the classroom because the noise she makes disturbs other children.
- Say what these difficulties arise from (if you know what causes them), explain what help your child requires for each of the needs you have listed.

# The child may need provision in accordance with an EHC plan

- What support has my child received already?
- Has this support made any difference? Has progress has been made?
- What support does my child need that they are not getting now?
- Why do they need this support?
- What are the risks if they do not get this support?
- Is a full assessment the only way to identify my child's difficulties and find out what help they need

# Ordinarily Available Provision

Provision that the Local Authority expects schools to provide for those children with SEND

Ordinarily Available Provision Document -  
Buckinghamshire Local Authority



# Answers to common questions

1. A child or young person does not need a diagnosis for an EHC needs assessment to be agreed
2. There is no legal requirement that the school spend a certain amount of money on support before an assessment is agreed
3. The Local Authority should consider all progress not just academic
4. The Local Authority should consider changes in the near future

# Example

- A child is not making progress
- The school feel they have put everything they can in place to support
- It is agreed that more support is needed for the child to make progress
- The school cannot provide this support – they say they do not have the resources

# What Evidence can I use?

## Formal reports

Diagnoses letters, assessments from professionals, school reports, SEN support plan, attendance records, test scores

## Informal reports/information

Home/ school diaries, behaviour logs, incident reports, examples of work, correspondence with school, child or young person's views, your own observations

For further information please see

[EHC needs assessments | Buckinghamshire Council](#) - See section 'What to include in your request'

[IPSEA Refusal to Assess pack](#)

# Next Steps

1. Check you have the refusal to assess decision letter from Buckinghamshire Council. If you do not, contact the integrated SEND team: [Working with professionals | Buckinghamshire Council](#)
2. Check the date of the letter compared to today's date, no more than 2 months should have passed since the letter was sent to you. You may still be able to appeal if more than 2 months have passed, but there should be good reasons for the delay.
3. Contact [Global Mediation](#) - within 2 months of the date of the decision letter you have received from the Local Authority, call Global Mediation on 0800 064 4488 or email [info@globalmediation.co.uk](mailto:info@globalmediation.co.uk).

# Where else can I find help?

See our webpages:

Other places where you can find help

EHC Needs Assessment - SENDIAS/FACT Bucks recorded webinar