

Refusal to Assess



- Have you received a 'Refusal to Assess' letter after applying for a Statutory Assessment?
- Do you want to know what you can do next?
- Would you like to understand the process of appealing this decision letter?



I have received a 'Refusal to Assess' Letter from the Local Authority, what next?

- Make a note of the date of this letter as it will help you understand the timelines if you wish to appeal this decision
- **2 months** from this date is the deadline you must register an appeal with the SEND Tribunal

What are my options now?

- Accept the Refusal letter and request that the school provide support themselves to meet the child/ young person's needs or put in place interventions for the child/ young person in an SEN Support Plan
- **Appeal** the decision:
 1. Directly to the 1st Tier Tribunal (without Mediation)
 2. Accepting Mediation between the LA and yourselves

What is Mediation?

- Whether you wish to accept Mediation or not, you **must 'consider'** it in order to go ahead with an appeal
- Mediation can be helpful if you feel that the LA have not heard your views
- If you decide to **go ahead with Mediation** it must be arranged within 30 days by Global Mediation
- After Mediation you will receive a certificate, you will then have **1 month** from the date of this certificate to appeal this decision with the SEND Tribunal if it was not successful
- If you decide **not to accept Mediation**, you will still need to call Global Mediation to obtain a certificate and they must provide this within 3 working days

Global Mediation
REPLACING CONFLICT WITH HARMONY



www.globalmediation.co.uk



0208 441 1355



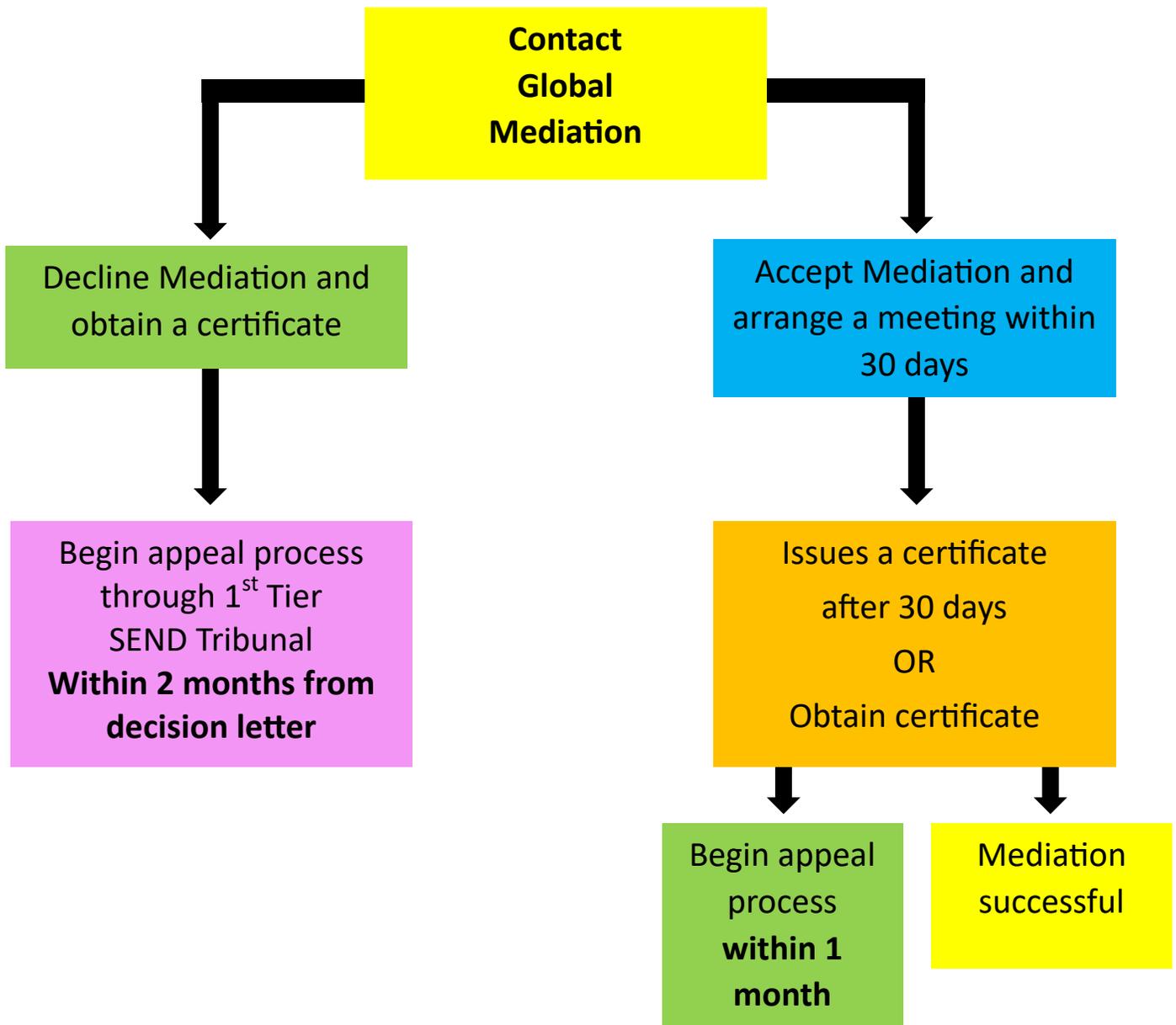
info@globalmediation.co.uk



8 Lytton Road, Barnet, EN5 5BY

Timeframes

- You have **2 months** from the date on the decision letter to appeal
OR
- You have **1 month** from the date on the Mediation certificate to appeal
(Whichever date is later)
- You have no right of appeal if the LA has carried out an EHC needs assessment in the past six months



Appeal Process

- You will need to complete the **Application For Appeal** form SEND 35A (see attached form)
- This type of appeal is considered '**on the papers**', meaning there is not a hearing which the parties need to attend. You just need to send in all of your evidence and explain your arguments in writing
- You can add a supporting letter to explain the reasons for your appeal and attach it to the form and title it **Reasons for Appeal** and in the SEND 35A box put '(See separate sheet for Reasons of Appeal)
- In the appropriate section of the form, say that you have asked the LA for an EHC needs assessment but it has refused



Reasons you may wish to include in your case for appeal

(Whichever fits best)

1. A full assessment is the only way to find out what the difficulties are and what help is needed
2. The school/institution may not be able to supply all the educational help needed unless it receives extra help from the LA
3. The school/institution has provided all the help that could be expected but the child or young person has not made enough progress





- Keep it short and to the point
- Separate your points into paragraphs
- Number your paragraphs or organise them under headings
- Refer to any evidence that backs up your points. (You can send more evidence later and should say so, if for instance you will be getting a speech therapy report because the LA has not obtained one)
- Refer to the legal issues



- Get bogged down on history. If there is a long history of difficulties between you and the LA let the evidence (e.g. letters between you and the LA) speak for itself

What to send with your form

- SEND 35A form completed
- A copy of the letter the LA sent you that told you of its decision
- Your mediation certificate
- Your evidence for your child needing assessment.
- A document listing all your items of evidence (don't send original documents, send photocopies, and keep a copy of everything you send, including the form)



**HM Courts &
Tribunals Service**

Where to send your appeal forms to

- You can email it directly to:
send@hmcts.gsi.gov.uk – this is the quickest option (write in the subject line of your email 'New Appeal' to ensure it is dealt with quickly)
- You can send by post (by recorded delivery):
HM Courts & Tribunals Service
Special Educational Needs and Disability Tribunal
1st Floor, Darlington Magistrates Court,
Parkgate, Darlington, DL1 1RU
- If you need to contact the Tribunal helpline the number is: 01325 289350

Advocate or Representative?

If you need support to fill out these forms SENDIASS can offer you information and advice, contact us directly

If you may have your own needs and are supported by another professional (e.g. Community Practice Nurse) they can be put on the form as a **representative** to communicate on your behalf

If you wish to have an **advocate**, SENDIASS can oversee all legal correspondence with you.



What happens once I have lodged an appeal?

- After you send in your appeal, the SEND Tribunal replies within **10 working days** registering your appeal
- In this response, the SEND Tribunal tells you about important dates. It tells you when the LA are required to respond to your appeal, gives you a deadline to send further information and tells you when the SEND Tribunal will be considering your case and making a decision
- At the same time, the SEND Tribunal writes to the LA, sending them a copy of your appeal documents
- The LA submits its response to the SEND Tribunal **within 30 days** of receiving your appeal documents from the SEND Tribunal. The LA must state whether it opposes your appeal and why. The LA must send you a copy of its response at the same time: tell the SEND Tribunal if you do not get it **within the 30 days**
- Ensure that any evidence you didn't send in with your appeal form gets to the SEND Tribunal by any deadline it gives you, and send a copy to the LA at the same time
- At least **10 working days** before considering your appeal and making a decision, the LA should send you and the SEND Tribunal the 'bundle', a page-numbered set of the documents the SEND Tribunal has been sent in the case
- If the SEND Tribunal decides in your favour, the LA has **four weeks** to begin the EHC needs assessment
- If you feel there has been an error or have some other serious reason for thinking the decision is wrong, you have **28 days** to apply for a Tribunal review. If necessary contact SENDIASS for advice



What the Tribunal can do

- The SEND Tribunal looks at the evidence put before it and decides whether the LA decision followed the law. It will also make a decision based on what is right for the child at the date of the hearing
- There are limits to what the SEND Tribunal can decide. If you win your appeal it can order your LA to make an EHC needs assessment. It cannot order the LA to draw up an Education, Health and Care plan (EHC plan) at the same time and it cannot order a school to make provision (extra help for you or your child) if it concludes that an EHC needs assessment is not needed



SENDIASS can offer Support and Advice



info@sendiassleicester.org.uk



0116 482 0870



SENDIASS Leicester



@sendiassl

Further Support

SENDIASS Leicester	0116 482 0870	www.sendiassleicester.org.uk
IPSEA	national	www.ipsea.org.uk
Council for Disabled Children	national	www.councilfordisabledchildren.org.uk
Special Education Services*	0116 454 2050	ses@leicester.gov.uk
Contact - For families with disabled children	national	www.contact.org.uk
Education Law Association	0118 9669866	secretary@educationlawassociation.org.uk

* SES are part of the Local Authority that organise and write up Education, Health and Care Plans for Leicester City children and young people

Key Words and Jargon

SEND	Special Educational Needs & Disabilities	A child/ young person that has a Special Educational Need and/ or Disability
EHCP	Education Health & Care Plan	Legal document highlighting a child/ young person's needs and provisions
SEN	Special Educational Need	A child/ young person that needs support in education
SEP	Special Educational Provision	Support that is put in place for a child/ young person
SES	Special Education Service	The Local Authority service that write and maintain EHCP's
SENDIASS	Special Educational Needs & Disability Information, Advice & Support Service	A service to support parents/ carers or young people themselves to give information, advice and support in a confidential and impartial way
LA	Local Authority	Authority responsible for all children/ young people in their area
LO	Local Offer (Local Authority website)	The Local Authority Website that supports parents/ carers and young people with SEND including information about schools/ colleges & accessing groups/ support

SENDIASS Leicester

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