

# How to complete SEND 35A Form

**Refusal to Assess Appeal Form**



## Section 1: Who is the appeal about?

A **child** under 16 years old

A **young person** aged 16 or over and under 25 years old

The child or young person's surname

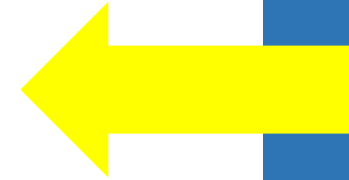
The child or young person's first name(s)

Gender

Male  Female  Other

Date of birth

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- If your child is under 16 you can tick the first box

- If your young person is 16- 25 you can tick the second box

- Fill out the child or young persons details



## Section 2: Reasons for appeal

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

### Legal Test the Tribunal will apply

The legal test for deciding whether to secure an EHC needs assessment is contained in the Children and Families Act 2014 s. 36(8).

The Tribunal will decide two questions in the appeal:

#### Question one: Whether the child or young person has or may have SEN?

Describe any special educational needs that the child or young person has:



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



- Here is where you can describe any needs or difficulties you feel your child may have (include diagnosis if they have one)
- *For example: struggles to concentrate or has ADHD diagnosis or is refusing to attend school/ setting*

- Here is where you can describe anything that your child may be struggling with and things you wish for further investigation
- *for example: undiagnosed sensory issues undiagnosed, anxiety issues, etc*

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

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



*(please continue on a separate page if necessary)*



- You can use a separate page to describe this section if you need to
- You can just type in this box 'see separate supporting page'
- Or you can fill out the box on the page

- Here is where you can state how you think an EHCP may be needed and what things you think they might need to support them
- *For example: 'they have a lifelong diagnosis/ condition that will require more support than their peers throughout their education to enable them to achieve their full potential' or 'I feel that the support they require will only be provided through the security of an EHCP to ensure that they get the right provision' or 'I feel that the support they require is more than what the school can provide without the support of an EHCP'*

### Section 3: Making the appeal



#### LA decision

Which local authority made the decision that you are appealing against?

What is the date on the decision letter from the local authority?

#### Late appeal or no mediation certificate

You must send your appeal to the Tribunal no later than 2 months from the date of the Local Authority's decision letter or within one month of the date of the mediation certificate, if later.

If the appeal is submitted to the Tribunal more than 2 months after the date of the Local Authority's letter or one month after the date of the mediation certificate, you must set out in writing the reasons for the delay and why you think the appeal would succeed if time for making the appeal is extended. If you do not do so, the papers will be returned to you without being registered or seen by a Tribunal Judge.

If you do not have mediation certificate you must set out in writing why you have not been able to get one. If you do not give an explanation, the papers will be returned to you without being registered or seen by a Tribunal Judge.

My appeal is being made late

I do not have a mediation certificate

Please explain why this has happened:



- Leicester City



- The date that is on your 'Refusal to Assess' letter from the Local Authority



- You should already have your Mediation Certificate (see checklist if not yet obtained)
- If for any reason you were unable to get one, you can explain why here
- *Please note: It is unlikely the Tribunal will accept an appeal without this certificate unless exceptional circumstances have arisen*

## Section 4: Deciding your appeal

The Tribunal will try to fast track the appeal to ensure a quicker decision. All appeals against a refusal to secure an EHC needs assessment decision will automatically be decided following consideration of the written evidence by the Tribunal without an oral hearing. Unless you notify otherwise, your consent will be presumed. If you wish to have an oral hearing, you will need to notify the Tribunal.

- I do not agree to a paper hearing and wish to attend an oral hearing.  
Please explain the reasons below for a Judge to consider.

### Existing claims/appeals

Is there another current appeal in relation to this child/young person or a sibling, that is being dealt with by the Tribunal?

- Yes, and my appeal number is

- No

Do you have an existing Disability Discrimination Claim for this child or Young Person registered with the Tribunal?

- Yes, and the date of my claim is

and my claim number is

- No

If possible, would you like these appeals/claims to be heard at the same time?

- Yes

- No



- With this type of Appeal, the Tribunal usually makes their decision 'on the papers'- this means they will look at paperwork only and it is unlikely to be a physical (oral) hearing
- If you disagree to it being 'on the papers' alone, you can explain why here
- It is unlikely that you would require an oral hearing for this type of Appeal



- Here is where you can describe any other claims or Appeals if you have any
- If you do not, you can leave it blank



## Section 5: Who is making the appeal?

I am making this application to appeal.

Please tick only one of these options – see page 1 for explanations:

- Parent or other – on behalf of a child under 16 years old
- Young Person – aged 16 and under 25 years old
- 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

### A. Details of first person making the appeal

- Mr  Mrs  Miss  Ms
- Other

Surname

First name(s)

If you are not the Young Person, what is your relationship to the Young Person e.g. parent, foster parent

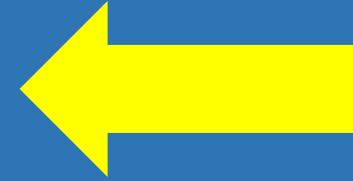
Emergency contact

Home address

Postcode

Daytime phone number

Mobile phone number



- If you are the parent/ carer of a child under 16, you can tick the first box
- If your child is over 16, you will need to support them to fill out **their** details in this section (you as a parent can be added as their ‘advocate’ in another section)
- If the person is 16+ but does not have the Mental Capacity for the Appeal (you will need to prove this professionally) you can tick ‘alternative person’
- *Please note: If the person is 16+ and has mental capacity but is not able to complete the full form themselves, you can fill it out for them on their behalf if you have gained their permission to do so*

- Under 16- Fill out parent/ carer details
- 16+ **with** full Mental Capacity- Fill out their details
- 16+ who do not have Mental Capacity- Fill out parent/ carer details and provide evidence of capacity



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

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, please give the name and contact details of each person or organisation and confirm that you have notified them of the appeal:

If you believe they should not receive details of the appeal, please explain why:

If any other court or tribunal has made an order concerning the child or young person, including the family court, you must provide the details:



- Here is where you can describe if any organisations share parental responsibility for the child or young person
- If this does not apply, you can simply write 'N/A' (non applicable)





### Your advocate

If you are a Young Person making the appeal, do you have an advocate to support you to express your views. Who are they?

Mr  Mrs  Miss  Ms  
 Other

Surname

First name(s)

Home address

Postcode

Daytime phone number



### Your representative

Have you appointed a representative to support you in making the appeal?  Yes  No

Please provide their contact details

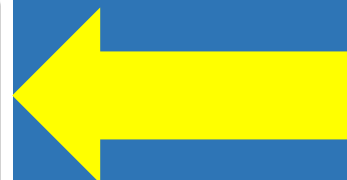
Mr  Mrs  Miss  Ms  
 Other

Surname

First name(s)

Contact address

Postcode

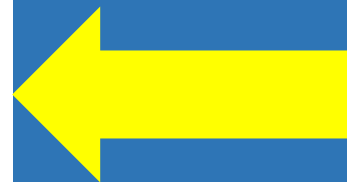


### Who should receive information about the appeal?

We can only send papers and documents to one of the people named on this form. If you do not say otherwise, we will send them to your representative.

Papers and documents should be sent to:

Advocate  Representative



- If the child or young person is under 16, you can fill out your details as their 'advocate' or
- If the young person is 16+ you can fill out your details as their 'advocate' or
- If you are being supported by a friend/ relative you can fill out their details with their permission as an 'advocate'
- *Please note; It is usually parents that are advocates for their children or just leave blank*

- If you have legal representation you can fill out this section, otherwise you can tick 'no'

- Here you can tick who you wish for documents to be sent to



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

Please tell us here about any special needs you may have which we need to take into account when arranging your hearing. This might be things such as hearing loops or disabled access.

### Question 1 – Your needs

Do you have any special needs?

Yes  No

If Yes, please tell us about this in the box below

### Question 2 – Your signer or interpreter and language requirements

Do you require an interpreter or signer to assist you at the hearing?

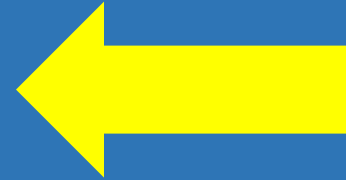
Yes  No

If Yes, please tell us the language and dialect required below

Language or type of sign language interpreter

Dialect

We will arrange for a professional interpreter to be present at the hearing.



- Here is where you can describe any needs that you as a parent/ carer may have
- *For example: Visually or hearing impaired, etc*



- Here is where you can describe what support you might need if an oral hearing was to take place
- You can request an interpreter in a different language or any other communication support you may need



## Section 8: Checklist

I confirm that the following documentation is enclosed with this appeal form:

- A signed and dated letter from the Local Authority giving you the right of appeal to HM Courts & Tribunals Service (**Local Authority decision letter**)
- A copy of the **signed mediation certificate**
- Your reasons for making the appeal
- The appeal form has been **signed and dated**

## Section 9: Please sign below

1<sup>st</sup> Parent or Young Person's signature

*If you are sending your appeal via email please type your name in the signature box.*

2<sup>nd</sup> Parent signature

**Representative signature**

(a qualified lawyer can sign on your behalf with your permission)

Who are you representing?

- 1<sup>st</sup> Parent
- 2<sup>nd</sup> Parent
- Young Person

Date / /

- You can use this as a checklist to ensure you have all the documents that you need for your Appeal

- If your child is under 16, you can sign the 1<sup>st</sup> parent details
- If the young person is 16+ this will need to be **their** signature (with permission to put their name)
- If you are completing the form online you can type your name in the box
- Leave representative box blank unless you have appointed legal representation



## Section 10: Sending us your appeal

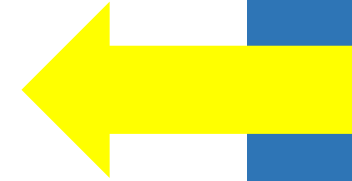
When you have completed the appeal form and signed it, please send it and all other relevant documents to

Email: [send@hmcts.gsi.gov.uk](mailto:send@hmcts.gsi.gov.uk) - write in the subject line of your email '**New Appeal**' to ensure it is dealt with quickly

HM Courts & Tribunals Service  
Special Educational Needs and Disability Tribunal  
1st Floor, Darlington Magistrates Court  
Parkgate  
Darlington DL1 1RU

Fax: 0870 739 4017

If you need to contact us by telephone our number is: 01325 289350



- You are now ready to send your Appeal to the Tribunal
- You can email directly to them and you will receive a 'receipt' that they have received it
- You can post it directly to them but you may wish to pay for recorded delivery and make sure everything you send is a copy due to being personal documents. This may take slightly longer to process



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

Please list the documents you are sending with the appeal, the date of each document and number of pages, its author (if known), and, if it is not obvious, why the document is relevant.

The type of evidence that will assist the Tribunal in making their decision includes:

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

Date of document	No. of pages	Name of person who signed or wrote it and the type of document	What is the relevance of this document?
21.11.16	25 pages	Dr M. Smith, Educational Psychologist	Assessment of needs



- Here is where you can list any documents that you have included as evidence
- *For example: Medical reports, professional reports, diagnosis, school reports/ letters, etc*

