

SEND Q&A Series

EHC Needs Assessments

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FOR MORE INFORMATION
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THE LOCAL AUTHORITY (LA) HAS REFUSED TO UNDERTAKE AN EHC NEED ASSESSMENT BECAUSE THE CHILD DOES NOT HAVE A FORMAL DIAGNOSIS. IS THIS CORRECT?

An LA refusal on this basis would be flawed and legally incorrect. Although a child or young person's formal diagnosis (i.e. ADHD, Autism) would carry some weight when requesting an EHC needs assessment, an absence of this should not be a barrier for them to receive special educational needs support and / or an EHC needs assessment.

The LA must complete an EHC needs assessment if a child or young person has or may have special educational needs, and where it may be necessary for special educational provision to be made for them accordance with an Education Health and Care Plan (EHCP) ([section 36\(8\) of the Children and Families Act 2014](#)). Note, the wording "may be necessary" does not necessitate that an EHCP is definitely going to be required but that this is a possibility. In my experience of running countless appeals for EHC needs assessments, the threshold is relatively low.

The Children and Families Act 2014 states that a child or young person has special educational needs (SEN) if they have a learning difficulty or disability which calls for special educational provision to be made for them. Let's examine this a little closer.

WHAT IS A LEARNING DIFFICULTY OR DISABILITY?

A child or young person has a learning difficulty if they have a significantly greater difficulty in learning than the majority of others of the same age, or a disability which prevents or hinders them from accessing education or making use of the facilities provided by the school. The SEN Code of Practice 2015 refers to four broad areas of need that schools should review and assess for children who they consider as having special needs. This includes:

- communication and interaction
- cognition and learning
- social, emotional and mental health, and
- sensory and/or physical needs

Difficulties in one or all of these categories could constitute a learning difficulty or disability.

I am often asked whether a disability needs to be medically diagnosed? In short, a child or young person does not need to be medically diagnosed but evidence of an impairment and its impact would usually be required. To determine whether an impairment is a disability, one must turn to the Equality Act 2010. This defines a disability as following:

1. A physical or mental impairment – this can be very wide and broad and would include neurodevelopmental conditions.
2. That impairment has a substantial adverse effect on a child's ability to carry out normal day-to-day activities. Substantial in this context means more than minor and trivial. 'Normal' day-to-day activities is also interpreted widely and can include taking part in school events and trips or even following instructions.

3. The impairment and its impact are long-term. This means it has lasted for at least 12 months or is likely to last for this length of time. Impairment that ceases to have the relevant effect are treated as continuing if it is likely to recur.

Evidence of impairments can be obtained from a wide range of sources, including professionals such as educational psychologist, speech and language therapist, occupational therapist, CAMHS, psychiatrist, specialist teachers, medical professionals and so on.

IN WHAT CIRCUMSTANCES SHOULD THE LA CARRY OUT AN EHC NEEDS ASSESSMENT?

There are different circumstances when it may be appropriate for a LA to undertake an EHC needs assessment but a common one is when a child or young person has already received school based support and is not making progress towards meeting their outcomes.

School based support is provided through a process called 'Additional SEN Support'. This includes the use of a graduated approach following the cycle of Assess, Plan, Do and Review. For pupils with SEN, schools should access what is commonly referred to as 'Element 2' funding. The Government guidance is that schools should provide up to £6,000 worth of SEND provision for a pupil with SEND from their budget. The school can decide how best to spend this sum, and it is not always the case that £6,000 will be spent on every child with SEN. For children with complex needs, this sum is often inadequate and only scratches the surface. In these circumstances, it is very likely that a Tribunal would overturn the LA's decision not to undertake an EHC needs assessment. For more information on SEND funding, please see our upcoming SEND Q&A Series on this.

The case for an EHC needs assessment might be further strengthened when a school has followed advice from external specialists (i.e. Behaviour Support Services, Educational Psychologist, Speech and Language Therapists and Occupational Therapists), but progress is limited, or the child's difficulties have worsened. In some cases, it might even be appropriate to apply for an EHC needs assessment where schools are unable to ascertain the exact nature of the child's need and are finding it difficult to know what support they should be offering.

Providing the LA evidence of interventions attempted and lack of progress with the application for an EHC needs assessment can be persuasive. Expert advice is not always needed but can be very useful if the matter has proceeded to an appeal to the SEND Tribunal. In my experience, I have found that parents and schools that work more collaboratively are often more successful in securing assessments in the first instance (without the need to appeal).

Whether the test for an EHC needs assessment is met depends on the facts of each case. If you would like to discuss ways in which we can assist, please do not hesitate to contact us on sendsupport@wslaw.co.uk or scan the QR code below:



This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.