

Appeal Rights under the Education Act 1996

1. Introduction

Before the implementation of the Children and Families Act 2014 (“**CAFA**”) on 1st September 2014, children with SEN whose special educational provision is being arranged by their local authority (“**LA**”) are receiving that support by way of a statement of special educational needs (a “**Statement**”).

After the implementation of CAFA new entrants into the system will be able to request the new form of statutory assessment, an EHC needs assessment, under the new system, which will lead to an Education, health and care plan (“EHC plan”).

However for the existing children (estimated at up to 270,000 children) who have Statements, moving from a Statement to an EHC Plan will be happening gradually over a period of four years. For details of how transition is expected to take place from a Statement to an EHC plan and the procedure for such transition please see our separate briefing on this subject.

This briefing is about children who have not yet moved into transition, i.e. who will still have Statements. It is anticipated that there will still be children with Statements until April 2018. In respect of such Statements the provisions of the Education Act 1996 relating to SEN and its related regulations and Code of Practice will continue to remain in force.

2. Appeal Rights

During the transition period where an LA makes certain decisions, the parents of the child will continue to have rights of appeal to the Special Educational Needs and Disability Tribunal (known as “SEND”) under the Education Act 1996 until the transition for their child has been completed:

- If the local authority refuses a request for statutory assessment. (NB After 1st September 2014 these will only relate to requests made before 31st August 2014 as after 1st September 2014 there can be no new requests for statutory assessment under the Education Act 1996. But there will still be some appeals going through the system where requests were made before that date if the LA has refused and there will be some appeals which have been lodged but not yet heard);
- If the local authority refuses a request for a statutory re-assessment;

- If the local authority refuses to issue a statement after a statutory assessment has taken place;
- If following a Statement being issued or following the issue of an amended Statement, a parent disagrees with the contents, i.e. about the description of the child's special educational needs (Part 2 appeal), and/or the description of the special educational provision (Part 3 appeal), and/or the school named or the fact that no school has been named (Part 4 appeal);
- If the local authority refuses to change the school named in the Statement (Schedule 27, paragraph 8 appeals);
- If the local authority refuses to amend the Statement after carrying out a re-assessment under section 323 of the EA 1996. This is also an appeal on the contents of the unamended Statement, i.e. this can be a Parts 2, 3 and/or 4 appeal);
- If the Local authority refuses to amend the Statement following Annual Review. This is also an appeal on the contents of the existing unamended Statement, i.e. this can be a Parts 2, 3 and/or 4 appeal;
- If the Local authority decides to cease to maintain the child's Statement. Parents appealing a cease to maintain notice can also appeal on the contents on the existing Statement.

The legal tests about these appeals are contained in Part IV and Schedule 27 of the Education Act 1996. In relation to appeals about the name of a school, section 9 of the Education Act 1996 will also still be relevant.

NB: the new element brought in by CAFA, compulsory consideration of mediation before lodging an appeal **does not apply** to these appeals under the old law. Dispute resolution and/or mediation is likely to be offered to parents but engaging in either of these is entirely voluntary where CAFA does not yet apply.

COMPARISON OF RIGHTS OF APPEAL UNDER CAFA AND EA 1996

CAFA 2014		EA 1996	
Refusal to carry out an EHC Needs Assessment	Section 51 (2) (a)	Refusal to carry out Statutory Assessment under the EA 1996	Section 329 (2) (b). These will only relate to requests made before 1 st September 2014. If successful, these appeals result in an EHC Needs Assessment under CAFA not a statutory assessment under EA 1996 which will no longer be available
Refusal to issue an EHC Plan after an EHC Needs Assessment has taken place	Section 51 (2) (b)	Refusal to issue a Statement after statutory assessment has taken place	Section 325 (2). Other than where there has been a re-assessment, this will only apply to assessments which took place or were in progress before 1 st September 2014
Appeal on the contents of a Plan (Sections B, F and/or I)	Section 51 (c)	Appeal on the Contents of a Statement (Parts 2, 3, and/or 4)	Section 326
Refusal to re-assess under section 44 of CAFA	Section 51 (2) (d)	Refusal to carry out an assessment for a child who has a Statement under section 328 (2)	Section 328 (3) (b)
Refusal to amend the Plan following re-assessment (also a contents appeal)	Section 51 (2) (e)	Refusal to amend a Statement following a re-assessment (also a contents appeal)	Section 326 (1) (c)
Refusal to amend the Plan following a review (also a contents appeal)	Section 51 (2) (e)	Refusal to amend the Statement following a review (also a contents appeal)	Section 328 (A)
Ceasing to maintain a Plan (can also be a contents appeal)	Section 51 (2) (f)	Ceasing to maintain a Statement (can also be a contents appeal)	Schedule 27, paragraph 11
No equivalent		Change of name	Schedule 27, paragraph 8