



THE SEND REFORMS

Steven Baylis, Solicitor, Irwin Mitchell, 21 October 2015

Children and Families Act 2014

The Section 19 Principles

In carrying out all their functions under the Act, LAs must have regard to:

- The views, wishes and feelings of the child, young person or parent
- The importance of their full participation in decisions
- The importance of their being provided with the necessary information and support to participate
- The need to support the child or young person to achieve the best educational or other outcomes

The Local Offer

Information to be included:

- special educational, health and social care provision for children and young people with SEN or disabilities
- details of how parents and young people can request an assessment for an EHC plan
- arrangements for identifying and assessing children and young people's SEN – including arrangements for EHC needs assessments
- other educational provision, for example sports or arts provision, paired reading schemes
- post-16 education and training provision, apprenticeships, traineeships and supported internships
- information about provision to assist in preparing children and young people for adulthood
- arrangements for travel to and from schools, post-16 institutions
- support to help children and young people move between phases
- sources of information, advice and support in the local authority's area
- childcare, including suitable provision for disabled children and those with SEN
- leisure activities
- support available to young people in higher education
- arrangements for resolving disagreements and for mediation, and details about making complaints
- parents' and young people's rights to appeal a decision of the local authority to the First-tier Special Educational Needs and Disability Tribunal
- the local authority's accessibility strategy
- Should cover universal, targeted and specialist services

EHC Needs Assessment Process

- May be requested by parent, young person or school / post 16 institution
- Anyone can bring a child to the attention of the LA if they think an assessment is necessary (Code Para 9.9)
- Criteria for assessment (section 36(8)); LA must assess if:
 - Child or young person has SEN; and
 - It may be necessary for SEN provision to be made for the child in accordance with an ECHP
- **No duty to assess disabled children if no SEN**
- The LA may develop criteria or guidelines to help them decide but must not apply a blanket policies – must consider individual circumstances

EHC Needs Assessment Process

- Must be consultation with child's parent or young person
- LA must notify parents within 6 weeks of request whether an assessment is necessary
- As part of assessment, LA must obtain:
 - Advice and information from YP and child's parents
 - Any person the YP / parents request the LA seeks advice from
 - Year 9 onwards – advice to assist with preparation for adulthood and independent living
 - Education, medical / healthcare and social care information
- If LA decides not to carry out an assessment must provide right of appeal to Special Educational Needs and Disability Tribunal

EHC Needs Assessment Process – Post 19

- Young person has right to request assessment
- Assessments can be requested for YP aged over 19 – extra consideration of whether YP requires additional time to complete education/training
- EHC plans to continue to 25 (end of academic year)
- Needs to be in interests of young person to stay in education/training
- Can include apprenticeships
- Recognises YP may move in and out of education – focus on re-engaging

Transitional arrangements

C&YP with existing Statements of SEN

- *“To ensure that EHC plans are person-centred and focused on outcomes, an EHC plan must only be issued following a ‘transfer review’ – an EHC needs assessment.”*
- Requirements for transfer review:
 - An EHC Needs Assessment
 - Must include a meeting with the parents or young person
 - Transfer cannot take place if there is a pending Tribunal appeal
 - Parents and school must have 2 weeks notice of the date of the meeting
 - LA must maintain statement until review is completed
 - Completed in 18 weeks

Transitional arrangements

C&YP with Learning Difficulty Assessments

- Requests for assessment must be dealt with as if the C&YP is a new entrant into the system
- LA's have 6 weeks to respond to request for assessment
- Where necessary, a full assessment must be carried out and EHC plan prepared
- There is a right of appeal if LA decide not to issue a EHC plan
- Where no EHC, should continue to receive provision as set out in the S139a (LDA) assessment

Draft EHC Plan

- After EHC needs assessment, LA must confirm (within 16 weeks of request):
 - Outcome of assessment
 - Whether it proposes to make an EHC plan
 - Reasons for the decision
- If the LA proposes to make an EHC plan it must send a draft plan to the parents or young person and give them 15 days to respond
- If LA decides not to make an EHC Plan it must provide right of appeal to Special Educational Needs and Disability Tribunal

Education, Health and Care Plans

Sections:

- A. The views, interests and aspirations of child, YP and parents
- B. The child/YPs special educational needs;**
- C. The child/YPs health needs which relate to their SEN;
- D. The child/YP's social care needs which relate to their SEN;
- E. The outcomes sought for the child/YP
- F. the special educational provision required by him or her;**
- G. any health care provision reasonably required by the learning difficulties and disabilities which result in him or her having special educational needs;
- H. Social care provision
- I. Educational Placement**
- J. Personal Budget (including arrangements for direct payments)
- K. Advice and Information

Request for particular placement

- Child's parents or young person must then make representations including on particular school named
- Where particular school requested, the LA must consult governing body and relevant LA if out of area
- The LA **must** name the school in the EHC plan unless:
 - the school is unsuitable for the age, ability, aptitude or SEN of the child or young person concerned, or
 - the attendance of the child or young person at the requested school or other institution would be incompatible with
 - the provision of efficient education for others, or
 - the efficient use of resources.
- The LA must then name the school or type of school the LA considers suitable.
- Note: Section 43 – duty on schools and **other institutions** to admit child or young person named in plan

The Final EHC Plan

- Final plan must be issued by a maximum of 20 weeks from the date of request for assessment
- A copy of the final plan must then be sent to parents and the placement named in the plan
- Where the LA maintains an EHC plan:
 - The LA must secure the specified special **educational** provision (Section F)
 - The responsible CCG must arrange any specified healthcare provision (Section G)

Annual Review Process

- EHC plans must be reviewed by the Local Authority:
 - In the first twelve months from when made
 - Every twelve months thereafter as a minimum
- Local Authority duties:
 - Consult with and take account of views of child or young person and child's parents
 - Consider progress towards achieving outcomes in EHC plan and if these outcomes are still appropriate
 - Consult school/any other institution child or young person attends
- If the child/young person attends a school or institution, LA can require head teacher to convene

The Annual Review Meeting

The following people must be invited to the meeting:

- Child's parents or young person themselves
- Head of early years provider/school/institution (if relevant)
- LA officer with responsibility for LA's education functions for children/young people with SEN
- LA officer with responsibility for LA's social care functions for children/young people with SEN
- Health care professional identified by "responsible commissioning body"
- Any other person the LA considers relevant (if the child or young person doesn't attend school or an institution)

After the meeting

After the meeting:

- Within 2 weeks, the school or LA must prepare written report with recommendations
- Within 4 weeks, the Local Authority must decide if it is going to continue, amend or cease to maintain EHC plan and inform child's parents, young person and head of any institution
- If LA decides to amend, they must notify the parents or YP of the fact.
- If the LA decides that no amendments are to be made, they must provide written notice to the parents or YP.
- A right of appeal against the educational parts of the Plan is triggered either against a decision not to amend, decision to cease to maintain or when a final amended EHC Plan is issued

Appeals and Mediation

- Appeals against the SEN element of EHC plans remain with the Tribunal – different timetables
- LA must send out information on appeal rights with the decision notice
- Mandatory requirement to contact a mediation adviser by telephone before you can lodge an appeal – not mandatory to go through mediation
- Time limit is 2 months from decision notice or 1 month from date of mediation certificate
- LA attendance is mandatory if family request
- Mediation also available for health and social care parts

Personal Budgets

- A local authority that maintains an EHC plan, or is securing the preparation of an EHC plan, for a child or young person **must** prepare a personal budget for him or her **if asked** to do so by the child's parent or the young person – ask when completing EHC needs assessment and LA decides to issue a Plan or at Annual Review
- Where a request for direct payments has been made, a local authority must consider that request
- LA must make arrangements for provision of information, advice and support including organisations that can provide assistance on direct payments
- Direct payment must be agreed by the school
- Cannot be used to fund school fees
- If requesting personal budget ensure that provision (Sections F, G and H) are correct first

Direct Payments

When will direct payments be made?

- recipient will use them to secure the agreed provision in an appropriate way
- parent or a nominee will act in the best interests of the child or the young person when securing the proposed agreed provision
- the direct payments will not have an adverse impact on other services
- securing the proposed agreed provision by direct payments is an efficient use of the authority's resources

Discrimination

- Equality Act 2010
- Must not discriminate in any aspect of school life – admissions, exclusions, access to services
- Duty on schools to make reasonable adjustments – applies with or without statement / EHC Plan
- Unofficial exclusions are unlawful
- Tendency to physical abuse – case law currently against children who may display some ‘violence’
- Right to bring a claim in the Special Educational Needs and Disability Tribunal
- Limit **within six months** of date of action / failure complained of.

Social Care and The Care Act 2014

Social care duties to disabled children

- Duty to assess a child's need for 'social care' services and, where necessary, provide services to meet assessed needs – s17 assessment;
- Duty to accommodate children whose parents are 'prevented' from providing them with suitable accommodation and care – s20 accommodation;
- Duty to respect disabled children's right to family and private life – Article 8 ECHR.
- Working Together Guidance – assessments to be completed in 45 working days from referral

Preparing for Adulthood

- Preparation for adulthood should begin at Year 9
- Annual reviews from Year 9 must include a focus on
 - planning of transition to adult social and health services where necessary
 - options and choices for next phase of education, e.g. invite representatives of post 16 institutions to review meetings
 - views of child/young person must be sought and taken into account

Transition Assessments

- Local authorities must carry out transition assessments where significant benefit for young person in doing so and likely to require care and support post 18.
- Must consider:
 - Current needs for care and support
 - Whether the young person is likely to have care and support needs post 18
 - If so, what needs likely to be eligible
- Under the Care Act 2014 - Support from children's services must remain in place until an adult needs assessment has been completed and adult care and support is in place-**No gap!**
- LA may continue to provide section 17 services after 18 as long as child has EHC plan

Social Care in EHC needs assessment

- LAs should develop and publish local protocols for assessment which should set out how the needs of disabled children will be address in the assessment process and clarify how statutory social care assessments will be informed by and inform EHC needs assessments leading to an ECH plan (10.17 of Code)
- Where there is an EHC needs assessment, it should be a holistic assessment of the child or YP's education, health and social care needs. EHC needs assessments should be combined with statutory assessments under section 17 where appropriate (10.18 of Code)
- EHC plan reviews should be synchronised with social care plan reviews

Steven.Baylis@irwinmitchell.com

Telephone: 0370 1500 100