



Department  
for Education



Department  
of Health

# **Draft Special Educational Needs (SEN) Code of Practice: for 0 to 25 years**

**Statutory guidance for organisations who  
work with and support children and young  
people with SEN**

**October 2013**

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# 1 Introduction

## 1.1 About this guidance

This Code of Practice is statutory guidance from the Department for Education on duties, policies and procedures relating to Part 3 of the Children and Families Bill and associated regulations. The Code provides practical advice on how to carry out statutory duties to identify, assess and make provision for children and young people with special educational needs (SEN).

The recipients listed in 1.4 **must have regard to it**. This means that whenever decisions are taken relating to children with SEN, consideration must be given to what the Code says. Bodies must fulfil their statutory duties towards children with SEN in the light of the guidance set out in this Code of Practice.

All those organisations listed in 1.4 **must** be able to demonstrate in their arrangements for children and young people with SEN, that they are fulfilling their statutory duty to have regard to this Code.

## References to statutory duties

In this Code of Practice where the text uses the word **must** this refers to a statutory requirement under primary legislation or regulations.

Where the text uses the word **should** it refers to best practice contained in this Code.

## 1.2 Expiry or review date

This guidance will be kept under review and updated when necessary.

## 1.3 What legislation does this guidance refer to?

This guidance refers to Part 3 of the Children and Families Bill and associated regulations. The draft regulations associated with the Children and Families Bill are:

- The Special Educational Needs (Local Offer) Regulations, Clause 30
- Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34

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- Education (Special Educational Needs) (Assessment and plan), Clauses 36, 37, 44 and 45
- The Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations, Clause 41
- The Special Educational Needs (Personal Budgets and Direct Payments) Regulations, Clause 49
- The Special Educational Needs (Appeal) Regulations, Clause 51
- The Special Education Needs (Mediation) Regulations, Clause 52
- The Special Educational Needs (Children's Rights to Appeal Pilot scheme) Order, Clause 54
- The Special Educational Needs (SEN co-ordinators) Regulations, Clause 63
- The Special Educational Needs (Information) Regulations, Clause 65
- Policy statement on regulations (Transitional arrangements), Clause 109

### **1.4 Who is this guidance for?**

This Code of Practice is statutory guidance for organisations who work with and support children and young people with SEN and their parents. These organisations include:

- local authorities (education, social care and relevant housing and employment and other services)
- early years providers
- schools
- further education colleges
- sixth form colleges
- academies (including free schools)
- independent special schools and independent specialist providers
- pupil referral units and alternative providers
- NHS England
- clinical commissioning groups (CCGs)
- NHS trusts

- NHS Foundation Trusts
- Local Health Boards
- SEND Tribunal (see 1.5 and 9.6)

## 1.5 The SEND Tribunal

When considering an appeal from a parent or young person the Special Educational Needs and Disability Tribunal (SEND Tribunal) **must** have regard to this Code of Practice. The Tribunal will expect local authorities, early education settings, schools and colleges to be able to explain any departure from the Code, where it is relevant to the case it is considering.

## 1.6 Changes from the SEN Code of Practice 2001

The main changes from the SEN Code of Practice (2001), to reflect the new legislation, are:

- The Code of Practice (2014) covers the 0-25 age range;
- There is a clearer focus on the views of children and young people and on their role in decision-making;
- It includes guidance on the joint planning and commissioning of services to ensure close co-operation between education, health services and social care;
- For children and young people with more complex needs a co-ordinated assessment process and the new 0-25 Education, Health and Care Plan (EHC plan) replace statements and Learning Difficulty Assessments (LDAs);
- There is new guidance on the support pupils and students should receive in education and training settings;
- There is a greater focus on support that enables those with SEN to succeed in their education and make a successful transition to adulthood.



## 1.7 Implementation of the Code of Practice

### Implementation

From 1 September 2014 the provisions in the Children and Families Bill, its associated regulations and Code of Practice will be in force.

From 1 September 2014 all the organisations listed at 1.4 **must have regard to this Code of Practice.**

Subject to any transitional arrangements made, from that date the following guidance will cease to have effect:

- SEN Code of Practice (2001)
- Inclusive Schooling (2001)
- Section 139A Learning Difficulty Assessments Statutory Guidance (2013)

### Transitional arrangements

From 1 September 2014 transitional arrangements will be in place to support the changeover from the current system to the new system in an orderly way. These arrangements will set out the elements of the SEN Code of Practice (2001) and Section 139A Learning Difficulty Assessments Statutory Guidance (2013) which will remain in force during the transition period.

## 1.8 Definitions of special educational needs (SEN)

A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for them. A child of compulsory school age or a young person has a learning difficulty or disability if they:

- (a) have a significantly greater difficulty in learning than the majority of others of the same age; or
- (b) have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

A child under compulsory school age has special educational needs if they fall within the definition at (a) or (b) above or would so do if special educational provision was not made for them (Clause 20 Children and Families Bill).

This is a broad definition covering children and young people from 0- 25 years of age. Where a child or young person has a disability or health condition which requires special educational provision to be made, they will be covered by the SEN definition.

Post 16 Institutions often use the term learning difficulties. The term SEN is used in this Code across the 0-25 age range but has the same meaning.

## 1.9 Related legislation and guidance

### Legislation

Disabled children and young people without SEN are not covered by the Bill or this Code of Practice but are covered by provisions elsewhere in legislation, including in the Children Act 1989, the Equality Act 2010 and the Health and Social Care Act 2012.

#### The Equality Act 2010

Everyone covered by this Code has duties in relation to disabled children and young people under the Equality Act 2010. They **must** not discriminate and they **must** make reasonable adjustments for disabled children and young people. Public bodies are also under wider duties to promote equality of opportunity.

The definition of disability in the Equality Act includes children with long term health conditions such as asthma, diabetes, epilepsy, and cancer. Children and young people with such conditions do not necessarily have SEN, but there is a significant overlap between disabled children and young people and those with SEN. Children and young people may therefore be covered by both SEN and disability legislation.

### Guidance

Where appropriate, references are made to other relevant legislation. The Code does not give guidance in relation to that legislation but signals where it can be found.

Related guidance that organisations may find it helpful to consider are:

- 'Working Together to Safeguard Children' (2013): Statutory guidance which sets out what is expected of organisations and individuals to safeguard and promote the welfare of children.
- 'The Children Act 1989 Guidance and Regulations Volume 2 (Care Planning Placement and Case Review)' and 'Volume 3 (Planning Transition to

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Adulthood for Care Leavers): Guidance setting out the responsibilities local authorities have towards looked after children and care leavers.

- 'Equality Act 2010: Advice for school leaders': Non-statutory advice from the Department for Education. It has been produced to help schools understand how the Equality Act affects them and how to fulfil their duties under the Act.
- 'Managing Medicines' (2013) (to be published).

## 2 Summary

### 2.1 Principles underpinning the Code of Practice

The legislative framework for the SEN system and the detailed guidance in this Code of Practice are underpinned by the principles set out in Clause 19 of the Children and Families Bill. Local authorities, in carrying out their functions under the Bill, **must** have regard to:

- the views, wishes and feelings of the child or young person, and their parents;
- the importance of the child or young person, and their parents, participating as fully as possible in decisions; and being provided with the information and support necessary to enable participation in those decisions;
- the need to support the child or young person, and their parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood.

These principles are designed to support:

- The involvement of children, parents and young people in decision making
- The identification of children and young people's needs;
- Collaboration between education, health and social care services to provide support;
- High quality provision to meet the needs of children and young people with SEN;
- Greater choice and control for young people and parents over their support;
- Successful preparation for adulthood, including independent living and employment.

## 2.2 The principles in practice

The key elements of the statutory framework in Part 3 of the Children and Families Bill reflect the principles above:

### Involving children, parents and young people in decision making

Parents have statutory rights to contribute to the decision making process about their child's education including in relation to assessments of SEN, provision for SEN, and the way that support is provided for SEN. Young people over 16 also have these rights.

Families and young people should have access to impartial information, advice and support to enable them to exercise their rights, including key working. Chapter 3 provides guidance to local authorities who are required to provide such advisory services. Information on these should be publicised in the local offer.

Children have a right to be involved in making decisions and exercising choices. They have a right to receive and impart information, to express an opinion, and to have that opinion taken into account in any matters affecting them. Their views should be given due weight according to their age, maturity and capability (*Articles 12 and 13 of the United Nations Convention on the Rights of the Child*).

Children and young people with SEN have unique knowledge of their particular circumstances. They have aspirations and goals. They have views on what might be done to remove any barriers to their learning and participation. They should be supported to participate in decisions about their own life, for example in relation to their learning and development, in reviews of their progress, assessments of their support needs and in decisions about their transition to adult life (Chapters 6 and 7). They should also be involved in discussions about the schools and colleges they would like to attend (Chapter 7) and have opportunities to participate in class and school councils and youth forums. Having these opportunities will help them develop the skills, confidence and self-esteem to contribute to decision making at a more strategic level such as the development and review of the local offer (Chapter 5).

### Identifying children and young people's needs

Local authorities **must** carry out their functions with a view to identifying all the children and young people in their area who have or may have SEN (clause 22).

Anyone can bring a child or young person who they believe has or may have SEN to the attention of a local authority (clause 23). Early years providers, schools and colleges have an important role in doing so; health bodies also have a duty to do so (clause 24). A child's parents, young people, schools and colleges have specific

rights to request an assessment for an Education Health and Care plan (EHC plan) and children and young people themselves should feel able to tell their school or college if they believe they have or may have SEN.

Chapter 6 provides guidance for early years providers, schools and colleges on identifying children and young people's SEN and making provision to meet those needs as early as possible.

Local authorities, CCGs and other partners **must** work together in local Health and Wellbeing Boards to assess the health needs of local people, including those with SEN. Their assessment (called a Joint Strategic Needs Assessment) informs a local health and wellbeing strategy which sets priorities for those commissioning services. Local authorities **must** also keep their special educational provision and social care provision under review (clause 27). Together these activities are designed to ensure that the education, health and social care needs of local children and young people with SEN are identified. Guidance on these matters is given in Chapters 4 and 5.

### **Greater choice and control for parents and young people over their support**

The services that are available as a result of strategic assessments of local needs and reviews of local education and care provision (clause 27) and of health provision (Joint Strategic Needs Assessments and Joint Commissioning arrangements (clause 26) should be reflected in the local authority's local offer. Linking these assessments and reviews to the local offer will help to identify gaps in local provision. Local authorities **must** involve children and young people with SEN and the parents of children with SEN in the development and review of their local offer. This will help to ensure it is responsive to local families. Guidance on the local offer is provided in Chapter 5.

Parents of children who have an Education, Health and Care plan and young people who have an Education, Health and Care plan have a right to ask for a particular school or college to be named in the Plan and for a personal budget for their support. Guidance is given in Chapter 7.

### **Collaboration between education, health and social care services to provide support**

If children and young people with SEN are to achieve their ambitions and the best possible educational and other outcomes such as getting a job and living as independently as possible education, health and social care services **must** work together to ensure they get the right support.

When carrying out their statutory SEN duties, local authorities **must** do so with a view to making sure that services work together where this promotes children and young people's wellbeing or improves the quality of special educational provision (clause 25). Local authorities **must** also work with one another to assess local needs. Local authorities and health bodies **must** have arrangements in place to plan and commission education, health and social care services jointly for children and young people with SEN (clause 26). Chapter 4 gives guidance on fulfilling those duties effectively.

## **High quality provision to meet the needs of children and young people with SEN**

High quality teaching is that which is differentiated and personalised to meet the needs of the majority of children and young people. Some children and young people need something additional to or different from what is provided for the majority of children; this is special educational provision and schools and colleges **must** use their best endeavours to ensure that provision is made for those who need it. Special educational provision is underpinned by high quality teaching and is compromised by anything less. Guidance is provided in Chapter 6.

For children and young people with SEN it is important to know precisely where they are in their learning and development; to ensure decisions are informed by the insights of parents and those of children and young people themselves; to have high ambitions and to set stretching targets for them; to track their progress towards these goals; to keep under review the additional or different provision that is made for them; and to ensure that the approaches used are based on the best possible evidence and are having the required impact on progress. Chapter 5 contains guidance setting out what all schools should be providing through the local offer.

The leaders of early years settings, schools and colleges are responsible for establishing and maintaining a culture of high expectations: a culture that expects those working directly with children and young people with SEN to include them in all the opportunities available to other children and young people; to facilitate their participation; and to ensure that they achieve well.

## **Supporting successful preparation for adulthood**

Local authorities, education providers and their partners should work together to help children and young people achieve successful long term outcomes, such as getting a job or going into higher education, being able to make choices about their support and where they live, and making friends and participating in society. Raising aspirations is crucial if young people are to achieve these goals. Planning needs to start early on, from Year 9 in school at the latest, and preparing for adult life should

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be an explicit element of conversations with children and their families as the young person moves into and through post-16 education. Guidance on what the local offer should include about support in preparing for adulthood is in Chapter 5. Chapter 6 includes guidance about how schools and colleges can help children and young people prepare for their future adult life, and Chapter 7 includes guidance about how EHC plans should reflect this important ambition.



## 3 A family centred system

### 3.1 Introduction

Local authorities **must** ensure that parents, children and young people are involved in discussions and decisions about every aspect of their SEN, planning outcomes and making provision to meet those outcomes, and in:

- planning and reviewing the local offer;
- reviewing special educational provision and social care provision; and
- drawing up individual EHC plans, reviews and reassessments.

Local authorities should work in partnership with health professionals, educational settings (including early years), and other agencies to promote aspiration for children and young people with SEN and to promote positive engagement with children and young people with SEN and their parents. Early years providers, schools and colleges should fully engage parents and/or young people with SEN when drawing up policies that affect them. They **must** also take steps to ensure that parents and/or young people are actively supported in contributing to assessments, planning and reviewing EHC plans. Schools should ensure that where practical pupils with SEN are represented on class and school forums. Colleges should ensure that students with SEN are similarly represented.

Enabling parents to share their knowledge about their child and engage in positive discussion helps to give them confidence that their views and contributions are valued and will be acted upon. At times, parents, teachers and others may have differing expectations of how a child's needs are best met. Sometimes these discussions can be challenging but it is in the child's best interests for a positive dialogue between parents, teachers and others to be maintained, to work through points of difference and agree outcomes.

It is very important to engage directly with children and young people to discuss their needs, and plan how they can achieve the best outcomes. This should be integral to all planning for children and young people with SEN throughout their lives. The Children and Families Bill gives significant rights directly to young people once they reach 16. When a young person is over 16, local authorities and other agencies should normally engage directly with the young person, ensuring that as part of the planning process, they identify the relevant people who should be involved, and how to involve them.

Parents are often the main carers for young people with SEN, and their views and opinions are important and valid during assessment, planning and reviewing.

### **3.2 Involving children, young people and parents in decision making**

Planning should start with the individual and take account of their wishes and aspirations, the outcomes they seek and the support they need to achieve them. It should enable parents, children and young people to have more control over decisions about their support.

Effective planning should help parents, children and young people express their needs, wishes and goals and should:

- focus on the child or young person as an individual, not their SEN label;
- be easy for children, young people and their parents to understand and use clear ordinary language and images, rather than professional jargon;
- highlight the child or young person's strengths and capacities;
- enable the child or young person, and those who know them best, to say what they have done, what they are interested in and what outcomes they are seeking in the future;
- tailor support to the needs of the individual;
- organise assessments to minimise demands on families; and
- bring together relevant professionals to discuss and agree together the overall approach.

This approach is often referred to as 'person-centred planning'. Using this approach within a family context, educational settings, professionals and local authorities can ensure that parents, children and young people are genuinely involved in all aspects of planning and decision making. Drawing up a one-page profile of the child or young person can help to ensure that those working with them and their parents have an accessible summary of the information about them, ensuring that EHC plans are developed with the child, young person and parents and reflect aspirational and achievable outcomes.

Advice about using person-centred planning is available at the [National Development Team for Inclusion \(NDTI\)](#).

## **The views of children and young people**

Part 3 of the Children and Families Bill relates to children and young people with SEN from 0 to 25 years. Families, and those providing support for them, should work closely together to enable the child or young person to learn and achieve, participate in activities and develop daily living skills. Parents are likely to play a more significant role in the childhood years with the young person taking more responsibility and acting with greater independence in later years.

Children and young people with SEN have a wide range of needs and whatever their needs they should have appropriate support to achieve the best possible outcomes. Some young people will be able to flourish without much additional support, some will require intermittent intensive support, and others will require on-going specialist support. In each case, the nature and degree of individual parental involvement will vary, and is likely to change over time. Local authorities, education providers and all those working with the child or young person and their parents should build this into their approach to working with them.

## **Supporting young people and their parents**

Young people over compulsory school age have new rights under part 3 of the Children and Families Bill. Parents and carers will continue to play a critical role in supporting a young person with SEN, especially where their needs are complex and they receive significant care at home. Local authorities, schools, colleges, health services and other agencies should involve parents and carers in decisions about a young person's future. However, there may be cases where family involvement is not appropriate – for example, where a young person has indicated that they do not want some or all family members to be involved. In these cases, agencies should respect the young person's choice unless they feel that it is not in the best interests of the young person.

When a child is over compulsory school age it is their views that take precedence over those of their parents, in respect of assessments and Education Health and Care Plans. Where there is a conflict of interests between the young person and the parent, it is the view of the young person that prevails, for example, in respect of the educational setting the young person wishes to attend. A decision by a young person to choose a particular college will typically involve discussion with their family and others, but the final decision will be with the young person.

Although the decision rests with the young person, a young person can ask any family member or other advocate to support them in any way they wish, including filling in forms, attending meetings, making telephone calls or, if the young person wishes, helping them to take an important decision. Local authorities, health

services, schools, colleges and other agencies should work flexibly to accommodate these arrangements.

Some young people will require support from a skilled advocate to ensure that their views are heard and acknowledged. They may need support in expressing views about their education, the future they want in adult life and how they prepare for it, including their health, where they will live, their relationships, control of their finances, how they will participate in the community and how they will achieve greater autonomy and independence. Schools and colleges working directly with young people should also involve their family in, for example, discussions about their study programmes and support.

The right of young people to make a decision is subject to their capacity to do so as set out in the Mental Capacity Act 2005. The underlying principle of the Act is to ensure that those who lack capacity are empowered to make as many decisions for themselves as possible and that any decision made or action taken on their behalf is done so in their best interests.

From Year 9 onwards, local authorities, schools, colleges and other agencies involved in the planning for a young person's transition to adult life should help them and their families prepare for the change in legal status once a young person is over compulsory school age. The local authority and other agencies should establish what support he/she needs to express views, and how the family should be involved. Schools and colleges should involve the families of young people with SEN in discussing their needs and their progress where that is their usual policy for students, and should ensure they have arrangements in place to contact the family if necessary where they have safeguarding, welfare or other concerns.

## Engagement of young people

Local authorities **must** work with young people with SEN directly in preparing and reviewing the local offer, reviewing and planning SEN provision and in the joint commissioning of services. They **must** ensure that there are arrangements in place to do this effectively, and seek the views directly of young people. This **must** include the support young people need and want to help them prepare for adulthood. Most young people want their parents, and other family members, to remain involved in their care, and so local authorities should expect also to seek the views of their parents in the majority of cases.

### 3.3 Impartial information, advice and support

Local authorities **must** provide all parents, children and young people with clear and accurate information, advice and support in relation to SEN, including the statutory assessment process and EHC plans. This will involve general information, advice and guidance as well as specific support to individuals as part of the provision of a co-ordinated assessment and planning process (see Chapter 7).

Local authorities **must** also provide information, advice and support that covers SEN, health and social care and is confidential and free for young people aged 0-25 and their parents. This should be impartial and provided at arm's length from the local authority and CCGs. The clearest way to achieve this is for local authorities to contract out such services to voluntary, community and private sector organisations. It should be available to parents of children and to young people (see section below) who may have SEN, and who should be involved in shaping the service. The joint arrangements that local authorities and CCGs **must** have for commissioning education, health and care provision for children and young people with SEN **must** include arrangements for considering and agreeing what information and advice is to be provided, by whom and how it is to be provided. The local offer **must** include details of how this impartial information, advice and support can be accessed and how it is resourced.

#### Parent Partnership Services

Parent Partnership Services provide impartial advice, information and support to parents in relation to special educational needs and provision. In practice, many are provided by local voluntary, community or private sector organisations. To provide effective support to families and young people, services will need to ensure they provide access to information, advice and support that covers education, health and social care.

CCGs may wish to include information on their local health offer on their own website, but should ensure that relevant information is also available at this single point of access. Local Healthwatch will be able to offer advice to patients and their families in relation to health services, and CCGs and local authorities should ensure that this information is clearly available to families.

#### Information, advice and support for young people over 16

Working directly with young people who may have SEN and disabilities requires different skills from working with parents. Young people must be confident that they are receiving a confidential and impartial service. Staff working directly with young people should be trained to support them and work in partnership with them,

enabling them to participate fully in decisions about the outcomes they wish to achieve. Advocacy for young people – who may be finding their voice for the first time, and who may need support in exercising choice and control over the support they receive – should be provided as part of this service, and it should direct young people to specialist support to help them prepare for employment, independent living (including housing), and participation in society.

Young people should be offered the same quality and level of support as parents, but because the type of support needed may differ significantly, local authorities should consider providing a separate service for young people. If they do, then the single point of access for information, advice and support should refer young people to this service, and should work closely with it, in order to ensure co-ordination and continuity across services from 0 to 25.

### **Accessing information, advice and support**

Information, advice and support are most useful to parents and young people when they are comprehensive and available through a single point of access. Advice and information services should have the capacity to handle initial phone, electronic, or face-to-face enquiries, and preferably be located in easily accessible premises that are independent of the local authority and CCGs.

### **What information, advice and support should be offered?**

The single point of access should provide information and advice on all matters relating to SEN including:

- local policy and practice;
- the local offer;
- personalisation and personal budgets; and
- education law on SEN and related law on disability, health and social care, through suitably independently trained staff.

The advice and support offered to children, young people and parents should include:

- key working support such as:
  - individual casework and informal advocacy;

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- support in attending meetings, contributing to assessments and reviews, and participating in decisions about outcomes for the child or young person;
- where requested by parents or young people seeking an EHC plan, and subject to availability, the offer of an Independent Supporter - a trained, independent individual from the voluntary or private sector, to help them through the statutory process, from requesting an assessment through to the agreement of the EHC plan and any associated personal budget;
- help when things go wrong, including resolving disagreements and providing support to manage mediation, appeals, exclusions, and complaints on matters related to SEN;
- directing parents, young people and those who support and work with them to additional support services where needed, including services provided by the voluntary sector. These services should include housing support, careers advice and employment support and may include volunteer supporters trained by the information and advice service;
- working separately and impartially with young people and their parents to resolve any disagreements between them; and
- contributing to strategic development of services by the local authority/CCG.

Information, advice and support services should have clear terms of reference and a development plan setting out needs and priorities for the service. They should review and publish information annually about the effectiveness of the service, including customer satisfaction.

Further guidance on how to deliver impartial information, advice and support for parents and young people can be found at the [National Parent Partnership Network website](#)

### **Support for parents in HM Armed Forces**

Parents serving in HM Armed Forces can also access the Children's Education Advisory Service (CEAS). This is an information, advice and support service established specifically for Service parents. It covers any issue relating to their children's education, including SEN. More information about CEAS may be found on the [CEAS website](#).

### 3.4 Parent carer forums

Parents and young people **must** be involved directly in discussions and decisions about the support available to them individually and more strategically, particularly through the development of the local offer.

Parent Carer Forums have been established in most areas. They are local groups of parents and carers of children with SEN and disabled children who work alongside local authorities, education, health services and other service providers to make sure the services they plan, commission, deliver and monitor meet the needs of children and families. They will have a steering group of parent carers who help to lead the forum and listen to the views of other parent carers in the local area to make sure they know what is important to them. Parent carer forums should work closely with individuals and organisations that provide impartial information, advice and support to individual parents and young people, such as Parent Partnership Services and other parent groups, to ensure there is clarity about their respective roles and that the views and experiences of parent carers inform and influence local policy and practice.

Effective parent carer participation happens when:

- the engagement and participation of parent carers in the local authority is valued, planned and resourced;
- the parent carer forum offers proactive and on-going leadership in parent carer participation;
- the participation of parent carers is evident at all stages in the planning, delivery and monitoring of services;
- the contribution of parents is recognised, for example, through public recognition, reward and remuneration;
- there are clearly described roles for parent carer representatives; and
- plans are in place for on-going recruitment and training of parent carer representatives.

Local authorities and parents and carers should work together to establish the aims of parent carer participation, to mark progress and build trust. Effective parent participation can lead to a better fit between families' needs and the services provided, higher satisfaction with services, reduced costs (as long term benefits emerge), better value for money and less conflict between providers and those dependent upon services.



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Local authorities, CCGs and other service providers should work in partnership with Parent Carer Forums when they are:

- preparing and reviewing their local offer, including the short break statement;
- reviewing, planning and monitoring provision for children with SEN; and
- commissioning services.

Early years providers, schools and colleges may also find their local parent carer forum, and groups representing young people with SEN, helpful in contributing to the development of their policies and practices for supporting children and young people with SEN and involving their families.

## **4 Working together across education, health and care**

### **4.1 Education, Health and Social Care – working together for positive outcomes**

#### **Overview**

Children and young people with SEN need integrated services - well coordinated, coherent support across education, health and social care which helps them achieve their agreed outcomes.

Clause 25 of the Children and Families Bill places a duty on LAs to exercise their functions to promote integration between special educational provision, health and social care provision where this would promote well-being and improve the quality of provision. Clauses 28 and 31 of the Children and Families Bill require health authorities and other bodies to co-operate with the LA to identify and support children and young people with SEN. Clause 26 requires local authorities and CCGs to commission services jointly for children and young people with SEN, including putting effective dispute resolution procedures in place where local agencies disagree.

The Health and Social Care Act 2012 requires Health and Wellbeing Boards to develop Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies, both of which support prevention, identification, assessment and early intervention and a joined up approach from those providing services.

The Children Act 2004 also places a duty on local authorities to make arrangements to promote cooperation with its partners (including the police, health service providers and youth offending teams and the probation services) in promoting the wellbeing of children and young people under 18 which includes safeguarding and the welfare of children.

This chapter provides further information and links to useful resources which will help LAs and CCGs work together to fulfil those duties. It uses a simple commissioning cycle to show the structure of a good joint commissioning process between LAs and CCGs: joint analysis, joint planning, joint delivery and joint review.

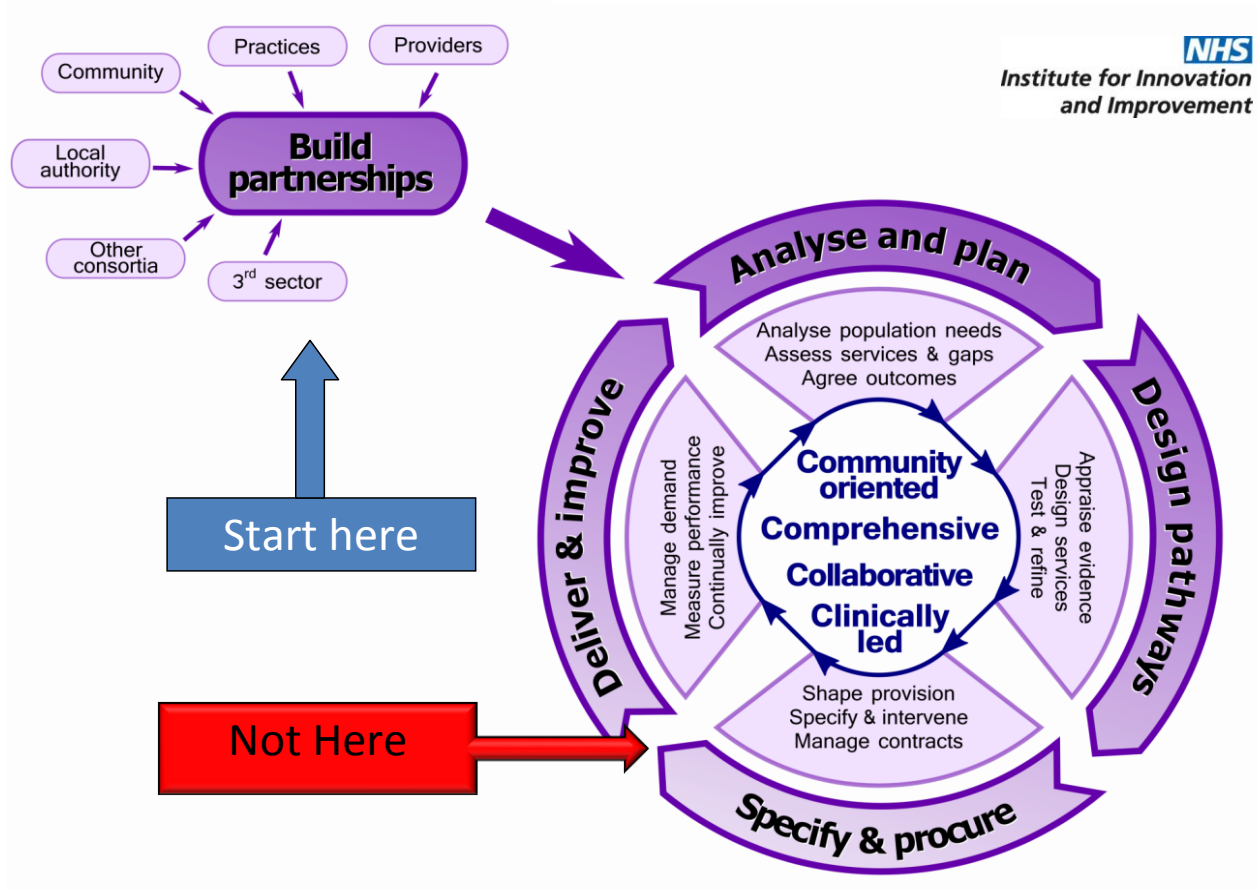


Figure 1: A joint commissioning cycle

In this chapter, the term ‘partners’ refers to those involved in the joint commissioning of education, health and social care provision for children and young people with SEN, including clinicians. Having a thorough understanding of both local strategic and delivery partners is crucial to establishing effective commissioning arrangements, and effective commissioning starts with that understanding.

## Working together for positive outcomes

Children and young people with SEN may need integrated support from education, health and/or social care to help them achieve their ambitions. Working together, these agencies can achieve far more for these children and young people than they can separately, more efficiently and often at reduced cost. The local offer **must** set out the range of services available locally to children with SEN and the support that children, young people and families may access outside the local area.

Joint commissioning is a strategic approach to planning and delivering services. It is how partners agree how they will work together to deliver personalised, integrated support resulting in positive outcomes across education, health and social care. It offers partners an opportunity to redesign local systems to operate more effectively,

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both to improve the experiences of users of the services and to make best possible use of local resources. It should identify improved system outcomes – e.g. better attendance and attainment for children and young people with SEN, a reduction in avoidable unplanned episodes of care in acute hospital services, improved patient experiences. Social care, health, and education, and other partners such as housing, employment and criminal justice, should work together to deliver improved system outcomes as well as better outcomes for individuals.

Joint commissioning requires local partners to identify the outcomes that matter to children and young people with SEN and then to work together to plan, deliver and monitor services against how well those outcomes have been delivered. It is an on-going process which should be directly informed by the experiences of children and young people with SEN and their families and the providers of services. Partners should agree how they will work together to monitor how outcomes are being improved as a result of the provision they make.

Joint commissioning enables partners to make best use of the resources available in an area to improve outcomes in the most efficient, effective, equitable and sustainable way<sup>1</sup>. Partners must consider how their local arrangements will meet the needs of children and young people. In particular, they should consider:

- prevention;
- early identification/ recognition;
- how children, young people and their families will be able to access services; and
- how transitions between life stages and settings will be managed, including from early years to primary education, primary to secondary, and secondary to FE; and
- how provision and support services will enable children and young people to prepare for their future adult life .

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<sup>1</sup> Good commissioning: principles and practice, Commissioning Support Programme, (Rev) September 2010

## Establishing effective partnerships

Local authorities must work to integrate SEN provision with health and social care provision where they think that this would promote the well-being of children or young people with SEN or improve the quality of special educational provision. Each local partner must co-operate with the local authority in this.

Both the Mandate to the NHS and the NHS Act 2006 and Health and Social Care Act 2012 make clear that NHS England, CCGs and health and wellbeing boards must promote integration of services. *Working Together to Safeguard Children (2013)* includes requirements for local agencies to work together to put processes in place for the effective assessment of the social care needs of individual children and young people who may benefit from early help services; and for local authorities and their partners to have a clear line of accountability for the commissioning and/or provision of services designed to safeguard and promote the welfare of children and young people.

Under clause 27 of the Children and Families Bill, the LA **must** review its special educational provision and social care provision consulting a range of partners including:

- children and young people with SEN, and the parents of children with SEN, in its area;
- the governing bodies of maintained schools and maintained nursery schools in its area;
- the proprietors of academies (including free schools) in its area;
- the governing bodies, proprietors or principals of post-16 institutions in its area;
- the governing bodies of non-maintained special schools in its area;
- the advisory boards of children's centres in its area;
- the providers of relevant early years education in its area;
- the governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that the authority thinks are or are likely to be attended by children or young people for whom it is responsible;
- a youth offending team that the authority thinks has functions in relation to children or young people for whom it is responsible;

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- such other persons as the authority thinks appropriate (e.g. adult social care, voluntary organisations, CAMHS services, local therapists, Jobcentre Plus and their employment support advisors, training/ apprenticeship providers, housing associations, careers advisers, leisure and play services).

LAs and CCGs should also consider the role that private, voluntary and community sector providers can offer in informing and delivering services and consider how they can develop the market where necessary.

### Responsibility for decision making in joint commissioning arrangements

Local governance arrangements **must** be established which ensure clear ownership and accountability across SEN commissioning. They **must** be robust enough to ensure that all partners are clear about who is responsible for delivering what, who the decision makers are in education, health and social care, and how partners will hold each other to account in the event of a dispute. It is important for elected members and chief executives across education, health and social care to demonstrate leadership for integrated working. Arrangements for children and young people with SEN should be specifically accountable to councillors and senior commissioners. This can take the form of a programme board, acting as a bridge between the LA's education and social care leadership and health partners. It should be clear who can make decisions both operationally (e.g. deciding what provision should be put in an EHC plan) and strategically (e.g. what provision will be commissioned locally, exercising statutory duties).

### Joint commissioning arrangements

While the details of which services should be commissioned in an area should be agreed locally, all local authorities and their partner CCGs **must** make arrangements for agreeing:

- The education, health and social care provision reasonably required by local children and young people with SEN;
- Which education, health and social care provision will be secured and by whom;
- What advice and information is to be provided about education, health and care provision and by whom and to whom it is to be provided;
- How complaints about education, health and social care provision can be made and are dealt with; and

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- Procedures for ensuring that disputes between local authorities and CCGs are resolved as quickly as possible.

Partners should also consider how they will respond to children and young people who need to access services swiftly.

Joint commissioning arrangements **must** include all education, health and care provision which has been assessed as being needed to support children and young people with SEN in the area. The services covered will include specialist support and therapies, such as clinical treatments and delivery of medications, speech and language therapy, occupational therapy, physiotherapy, a range of nursing support, specialist equipment, wheelchairs and continence supplies. They could include highly specialist services needed by only a small number of children which are commissioned centrally by NHS England (for example augmentative and alternative communication systems, or provision for young offenders in the secure estate). They can also include provision delivered by the private or voluntary sectors: voluntary organisations often offer services which are more responsive and locally acceptable to the people who use them. CCGs must work with their local authority partners to ensure that the right services are in place locally to meet the needs of the population. These services will be included in the local offer.

For social care, services will include any support assessed as being reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs. This can include any services assessed under an early help assessment and/ or under section 17 or section 47 of the Children Act 1989 or assessments under adult care provisions. It can also include services for parents and carers which will support the child's outcomes such as mental health support.

The joint commissioning must also include arrangements and responsibilities for securing outcomes and personalised services, specifically:

- securing Education, Health and Care assessments;
- securing the education, health and care provision specified in EHC plans; and
- agreeing personal budgets.

## 4.2 Roles and responsibilities

### Social care teams

Local authority children's social care services should designate an officer or officers to support their social care teams in undertaking their duty to co-operate in commissioning and devising the local offer, and to act as the central point of reference for the local authority's SEN teams on matters related to social care.

Where a child or young person has been assessed as having social care needs in relation to their SEN, social care teams have a number of responsibilities and duties. In particular, they should:

- Provide early years providers, schools and colleges with a contact for the provision of social care advice on children and young people with SEN;
- Make available social care provision which has been assessed as being necessary to support a child or young person's SEN and which is specified in the EHC plan;
- Undertake reviews of children and young people with EHC plans where there are social care needs;
- Make sure that for looked after children and care leavers the arrangements for assessing and meeting their needs across education, health and social care are coordinated effectively within the process of care and pathway planning in order to avoid duplication and delay, and in particular liaising with the Virtual School Head (VSH) for looked after children.

Where children or young people with SEN also have a child in need or a child protection plan, the social worker within the SEN team should ensure the statutory timescales for social care assessments are met and any assessments are aligned with EHC assessments wherever possible. *Working Together to Safeguard Children* (2013) gives full details. It is available at the [Department for Education's website](#).

### Adult social care

The Care Bill will create a single statute for adult care and support, and makes clear that children's and adults' services must work closely together. Specifically, the Bill will ensure that young adults are not left without care and support as they make the transition between child and adult social care and support systems.



Where a young person with an EHC plan has been assessed for adult social care and support and has a care plan under the Care Bill, the care plan can form part of the EHC plan.

Where this is the case, adult and children's services should work closely together to ensure a smooth transition for the young person. The Care Bill requires local authorities to co-operate to achieve this, and reflects the duties on local partners to co-operate generally, and the duty to co-operate in specific cases, including over EHC plan assessment or planning. Clause 50 of the Children and Families Bill gives local authorities a power to continue children's social care services for a young person with an EHC plan who is over the age of 18 for as long as their plan is maintained.

## Local authorities' role in delivering health services

Local authorities and CCGs should consider how best to integrate the commissioning of services for children and young people with SEN with the CCG's broad responsibility for commissioning health services for other groups, and the local authority's responsibility for health protection and health improvement for the local population. The local authority in particular has responsibility for securing a range of public health services which may be relevant for children and young people, and will want to consider how this can be aligned with the arrangements for commissioning SEN services: for example, the Healthy Child Programme for pre-school and school-age children, including school nursing.<sup>2</sup>

## Health services

Health bodies **must** co-operate with the local authority in commissioning integrated, personalised services and designing the local offer (including ensuring relevant contracts with providers reflect the needs of the local population).

Clinicians and providers will:

- support the identification of children and young people with SEN, particularly at key points such as in the early years through the progress check at age 2, the integrated health check and through the healthy child programme;
- respond to requests for advice for an EHC plan within required time limits;

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<sup>2</sup> A factsheet has been produced on the public health responsibilities of local authorities and is available at the [GOV.UK website](https://www.gov.uk)

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- make available health care provision specified in the EHC plan as per their commissioned role;
- contribute to regular reviews of children and young people with EHC plans where requested/relevant.

### Designated Health Officer

Identifying children and young people with SEN, and offering them the health support they need in relation to their learning difficulty or disability, is crucial. A Designated Health Officer (DHO) should be identified whose role is to ensure that the CCG is meeting its statutory responsibilities for SEN. Every CCG must help LAs identify and support children and young people with SEN. This includes:

- Ensuring that local health services (including primary and secondary care) are able to inform the local authority of children under compulsory school age who they think may have SEN (clause 24).
- The individual or individuals designated by the CCG with responsibility for fulfilling this function should provide the point of contact for LAs and schools seeking health advice on children who may have SEN.
- The DHO should also ensure other agencies are fully engaged with arrangements for ensuring appropriate statutory notifications are made.
- The DHO may also offer an advocacy role for children and young people with SEN.

In addition to this co-ordination/advocacy function, the DHO may also be given a role by the CCG contributing to strategic commissioning for SEN, ensuring that there are positive relationships between local commissioners, working to ensure effective co-operation and integration between education, social care and health, and reporting to the CCG executive and governing body.

The DHO might be an employee of a CCG, or an employee of an NHS Trust or other provider commissioned by a CCG, NHS England or a local authority. The DHO should have an appropriate level of clinical expertise to enable them to exercise these functions effectively. The DHO would not routinely be involved in assessments or planning for individuals, except in the course of their usual clinical practice, but would be responsible for ensuring that assessment, planning and health support is carried out.

## 4.3 Developing a joint understanding of local needs

### The Joint Strategic Needs Assessment process

Each local area has a health and wellbeing board which includes representatives from the local Healthwatch, each local CCG and the local authority directors for adult social services, children's services and public health. The board's job is to improve the health and wellbeing of the local population and reduce health inequalities. It has strategic influence over local commissioning decisions.

The Joint Strategic Needs Assessment (JSNA) is the means by which the board works together to understand and agree the needs of all local people and is the basis for the joint health and wellbeing strategy that sets the priorities for joint action. Further information about the JSNA is available on [the Department for Health's website](#).

Health and wellbeing boards should consider the needs of vulnerable groups including those with SEN and disabled children and young people, those needing palliative care and looked after children.

The JSNA considers the needs of the local community as a whole. Local partners across education, health and social care should then work together to establish what targeted commissioning is needed to address the identified needs.

### Using information to understand and predict need for services

To inform decision making partners should draw on the wide range of local data-sets about the likely education, health and social care needs of children and young people with SEN.

Such data-sets will include:

- population and demographic data;
- prevalence data for different kinds of SEN and disabilities among children and young people at national level;
- numbers of local children with EHC plans and their main needs;
- the numbers and types of settings locally that work with or educate children with SEN and disability;

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- an analysis of local challenges/ sources of health inequalities (e.g. level of local economic deprivation and historic data about previous support offered through statements/EHC plans).

Areas should also seek to predict future need for services, by drawing on birth, migration and other data. Public Health colleagues should be actively involved. Chimat is a useful source of data which is available from Public Health England at the GOV.UK [website](#).

Local authorities are required under schedule 2 of the Children Act 1989 to maintain a register of disabled children in their area. These registers are particularly helpful for providing data on low-incidence needs that can be difficult to predict from national data sets.

Commissioning arrangements need to be based on evidence about what services, support and interventions are effective and it is therefore important that areas maintain up-to-date information on research and guidance on good practice. Partners should also consider the experiences of children, young people and families to improve future arrangements, and the effectiveness of existing local joint working or representative groups such as Parent Carer Forums or voluntary and community sector providers.

## 4.4 Joint Planning

### Deciding on outcomes

Partners should use their joint analysis to decide upon the outcomes they want to achieve, for example improvements in educational attainment, levels of mental health and wellbeing and reductions in health inequalities, drawing on the analysis of the health and wellbeing board and consulting with family representatives such as Parent Carer Forums.

They should agree on measures for monitoring and evaluating progress, for example:

- improved educational progress and outcomes for children and young people with SEN;
- improved family well-being;
- increasing the proportion of children with SEN whose needs are identified before school entry (e.g. through the two year old check);

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- a reduction in avoidable unplanned episodes of care in acute hospital services;
- a reduction in the number of children and young people with SEN entering the youth justice system;
- family (or patient) experience feedback.

Based on their analyses, partners should agree local priorities and how planning and commissioning should help to meet them. This will inevitably be a long-term process: in one sense the joint commissioning process is an on-going improvement cycle. Over time, partners may shift the focus of their activity as the needs of the local population change, and delivery of services improves.

The Children and Young People's Outcome Forum *report Improving Children and Young People's Health Outcomes: a system wide response* is a useful resource that partners should draw upon. It is available from the [GOV.UK website](#).

### **Early intervention, early help and prevention**

Local services should identify needs and offer effective support as soon as possible for children or young people who need it. This will help improve children and young people's outcomes, and enable more effective use of resources. For example, using the outcomes of developmental assessments as outlined in the Early Years Foundation Stage (EYFS) to target early help to children experiencing developmental delay can reduce the need for specialist services later on. There are similar opportunities to target early support on speech, language and communication difficulties and/ or mental health problems and partners should consider reviewing how they invest in these services to improve outcomes and reduce costs in the longer term.

### **Making best use of resources**

Joint commissioning requires an understanding of which services are currently delivered and which resources are being devoted to them. This analysis will directly contribute to the development of the local offer, but it will also help partners identify scope for working more efficiently together. By reviewing how funding and people are being allocated to existing priorities, partners can understand if there are any unnecessary duplications or omissions. Partners should assess whether there are any activities which do not contribute to their local priorities, and decide which services should be commissioned or decommissioned, in consultation with children and young people with SEN, their parents, or representative groups.

## **Regional collaboration: meeting the needs of children and young people with highly specialist needs**

Partners should actively consider the economies of scale and other benefits that come with information sharing, strategic planning and commissioning across groups of authorities, or at a regional level.

This collaboration offers four main advantages:

- 1) it can offer parents and young people more choice, enabling them to access a wider range of services or educational settings if they wish to do so;
- 2) for areas where there is a great deal of movement across LAs (e.g. London), looking at how regional support can better meet family needs can offer greater efficiencies and better continuity for children and young people;
- 3) there are some groups of children and young people for whom the local authority and CCG has responsibility where there may not be enough children or young people living locally to make a service sustainable, for example, children and young people with severe and complex learning disabilities and behavioural issues, or dual-sensory disabilities; and
- 4) it can provide opportunities for securing better value for money through greater cost transparency and more effective management of costs.

## **Children with health needs living outside their home authority**

Local authorities have a legal duty under Section 19 of the Education Act 1996 to make arrangements for any pupil of compulsory school age who is not at school and would not otherwise receive suitable education. The education arranged must be full time unless the local authority judges that, for reasons which relate to the physical or mental health of the child, it would not be in the child's best interests for full time education to be provided. Where a pupil is normally resident in a local authority but is, for example, receiving medical treatment elsewhere, it is still the duty of the 'home' local authority to arrange suitable education if it would not otherwise be provided.

In order for the home local authority to meet its legal duties it is important that they are involved in decisions about a pupil's education from the start. This will also help ensure that there is clarity over how educational provision will be funded. Local authorities' duties do not require them to commission a particular educational provider. It is important, however, that decisions about educational provision do not unnecessarily disrupt a pupil's education or treatment and take account of their needs.

The Department for Education has issued statutory guidance to local authorities on the education of pupils who cannot attend school because of health problems, which is available at the [Department's website](#).

## 4.5 Joint Delivery

### Delivering support

Partners will need to decide how best to implement and deliver the actions agreed at the planning stage. This could include continuing existing provision, re-designing or decommissioning existing services, or procuring new or alternative provision. The governance arrangements established by partners should enable them to track progress against the commitments for delivering services made at the planning stage, and resolve any disputes that arise between partners.

At a strategic level partners should consider:

- The workforce implications of moving to a more integrated, personalised working style. Partners should consider whether training or a common set of key skills will help professionals and providers adapt to meeting the needs of children and young people with SEN in a more personalised way, with a renewed focus on children and young people's outcomes. Joint training and professional development for the various professionals dealing with children and young people with SEN should be encouraged. Some local areas have used specialist staff to train the wider workforce so they can better identify need and offer support earlier (e.g. using educational psychologists or speech and language therapists to train professionals such as teachers or GPs to identify mental health problems or speech and language delay, respectively).
- The opportunities to engage children and young people with SEN and their parents in commissioning decisions - to give useful insights into how to improve services, and improve outcomes. LAs, CCGs and NHS England must develop effective ways of harnessing the views of their local communities so that commissioning decisions on services for those with SEN are shaped by people's experiences and aspirations. LAs and CCGs will want to engage with local Healthwatch organisations, patient representative groups, Parent Partnerships, Parent Carer Forums, groups representing young people with SEN and other local voluntary organisations and community groups to do this.
- Aligning, integrating and pooling budgets: Under Section 10 of the Children Act 2004 and Sections 14Z1 and 75 of the National Health Service Act 2006, local authorities and CCGs have a **statutory duty** to consider the extent to

which children and young people's needs could be more effectively met through integrating services. Health and wellbeing boards and SEN partners should consider the extent to which such budgets might be pooled in order to offer greater value for money, improved outcomes and/ or better integrated services for children and young people with SEN.

- Personal Budgets: Young people and parents of children who have EHC plans have the right to request a personal budget, which may contain elements of education, social care and health funding. Partners **must** set out their arrangements for agreeing personal budgets and should develop and agree a formal approach to making fair and equitable allocations of funding.

### The health commissioning duty

As health service commissioners, CCGs are under a duty under section 3 of the NHS Act 2006, to arrange health care provision for the people for whom they are responsible, to meet their reasonable health needs.<sup>3</sup> This is the fundamental basis of commissioning in the NHS. CCGs have to exercise discretion as to what services should be commissioned, and will draw on local Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies, as well as other data on local needs, in drawing up their commissioning plans. They **must** also consult with their local population on those plans. However, where there is provision which has been agreed in the health element of the EHC plan, health commissioners **must** have arrangements in place to secure that provision. This issue is explored in more detail in Chapter 7.

### Joint review / improving provision

Partners should monitor both the changing needs of the local population of children and young people with SEN closely, and crucially whether or not the provision arranged for them is improving outcomes. EHC plans for individual children and young people must similarly be reviewed to see if they are enabling the child or young person to achieve their desired outcomes. Any changes in provision commissioned locally should be reflected in the local offer.

Local authorities also have a **duty** to keep under review the special educational provision and social care provision in their areas for children and young people who have SEN and the provision made for local children and young people who are

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<sup>3</sup> NHS England may also have commissioning responsibility for some children and young people (for example in some secure children's homes), and therefore a similar duty to meet their reasonable health needs. See the National Health Services Commissioning Board and CCG (Responsibilities and Standing Rules) Regulations 2012 which are available at the [National Archives](#).



educated out of the area, working with the partners to their joint commissioning arrangements. This joint commissioning duty will help ensure that local authorities, health professionals and volunteers come together to organise services, and set out a clear expectation of what parents, children and young adults with SEN can expect.

Joint commissioning arrangements **must** consider the needs of children and young people with SEN as they prepare for adult life. This includes provision to help prepare them for independent living: employment, accommodation, and other support which allows them to participate fully in society. Partners should also work with commissioners of adult services to ensure that there are smooth transitions between children's and adult services. This will involve working with a range of professionals in the public, private and voluntary/community sector.

### **Additional useful resources**

'Making it personal' – how to commission for personalisation – guidance for commissioners and others in children's services which details of how commissioning and each element of the commissioning cycle supports the personalisation agenda. 'Making it personal' is available at the [Kids website](#).

The BOND Consortium have collated a range of materials which summarise how to develop the market to support wider commissioning, with a particular focus on mental health services. They are available at the [Young Minds website](#).

The Commissioning Support Programme offers a range of helpful resources about [governance, Commissioning activity and building capacity](#).

In Control offers helpful examples of using personal budgets including pooling. These are available from [In Control](#).

## 5 The Local Offer

*[Draft regulations for consultation relevant to this chapter are:*

- The Special Educational Needs (Local Offer) Regulations, Clause 30]

### 5.1 The local offer

Local authorities **must** publish a local offer, setting out in one place information about provision they expect to be available for children and young people in their area who have SEN, including those who do not have EHC plans.

The local offer has two key purposes:

- To provide clear, comprehensive and accessible information about the provision available; and
- To make provision more responsive to local needs and aspirations by directly involving children and young people with SEN, parents and carers, and service providers in its development and review.

The local offer should not simply be a directory of existing services. The process of developing the local offer is intended to help local authorities and their health partners to improve provision.

The local offer **must** include provision in the local authority's area. It **must** also include provision outside the local area that the local authority expects is likely to be used by children and young people with SEN for whom they are responsible. This could, for example, be provision in a further education college in a neighbouring area or support services for children and young people with particular types of SEN that are provided jointly by local authorities. It should include relevant regional and national specialist provision, such as provision for children and young people with low incidence and more complex SEN.

The 'Special Educational Needs (Local Offer) Regulations' provide a common framework for the local offer. They specify the requirements that all local authorities **must** meet in developing, publishing and reviewing their local offer:

- The information to be included;
- How the local offer is to be published;
- Who is to be consulted about the local offer;

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- How children and young people with SEN and parents will be involved in the preparation and review of the local offer; and
- The publication of comments on the local offer and the local authority's response.

The local offer should be:

- **Collaborative:** local authorities **must** involve parents, children and young people in developing and reviewing the local offer. They **must** also cooperate with those providing services.
- **Accessible:** the published local offer should be easy to understand, factual and jargon-free. It should be structured in a way that relates to young people's and parents' needs (for example by broad age group or type of special educational provision). It should be well signposted and publicised.
- **Comprehensive:** parents and young people should know what support is available across education, health and social care from 0 to 25 and how to access it. The local offer must include eligibility criteria where relevant and make clear where to go for information, advice and support, as well as how to make complaints about provision or appeal against decisions.
- **Transparent:** the local offer **must** be clear about how decisions are made and who is accountable and responsible for them.

## 5.2 What must be included in the local offer?

Local authorities **must** include information about all the areas specified in the *Special Educational Needs (Local Offer) (England) Regulations*. They may wish to include wider information, taking account of their discussions with children and young people with SEN and their parents. They can, for example, use the local offer to set out the support available for disabled children and young people who do not have SEN.

The local offer should cover:

- Support available to all children and young people with SEN from universal services such as schools;
- Targeted services for children and young people with SEN who require additional short term support over and above that provided routinely as part of universal services;

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- Specialist services for children and young people with SEN who require specialised, longer term support.

The local offer **must** include information about:

- Education, health and social care provision for children and young people with SEN;
- 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 such as sports or arts provision;
- Post-16 education and training provision;
- Apprenticeships, Traineeships, and Supported Internships;
- Arrangements for travel to and from schools, post-16 institutions and early years providers;
- Support to help children and young people move between phases of education (for example from early years to school, from primary to secondary) and prepare for adulthood;
- Sources of information, advice and support in the local authority's area relating to SEN including information provided under clause 32 of the Children and Families Bill, forums for parents and carers, and support groups;
- Childcare, including suitable provision for disabled children and those with SEN;
- Leisure activities;
- Support available to young people in higher education, particularly the Disabled Students Allowance (DSA) and the process and timescales for making an application for DSA; and
- Arrangements for resolving disagreements, mediation, and parents' and young people's rights to appeal a decision of the local authority to the Tribunal in respect of SEN and provision. This information should also include routes of complaint and redress for health and social care.

## Education, health and care provision

### Education

Mainstream schools and colleges, including academies and free schools, **must** use their best endeavours to secure the special educational provision called for by a child's or young person's needs. These settings receive core funding to make general educational provision for all pupils/students and additional funding to help make provision for those who need additional support, including those with SEN. These funds are included in their budgets and they can spend them as they think best. But they should make sure funding is allocated to provide high quality provision for those with SEN. They have a duty to identify, assess and make special educational provision for all children and young people with SEN, whether or not they have an EHC plan. If they can show that a child or young person with SEN requires special educational provision that costs more than a certain threshold they can ask the local authority to provide top-up funding to meet that extra cost, whether or not the child has an EHC plan.

The local authority **must** set out in their local offer a description in broad terms of the special educational provision early years providers, schools, and the full range of post-16 providers and other institutions are expected to provide from their own budgets to support children and young people with SEN, including information about the arrangements in place for:

- Identifying children and young people with SEN and assessing their needs;
- Adaptations to curriculum, teaching and the learning environment and access to ancillary aids and assistive technology;
- Assessing and reviewing pupils' and students' progress towards outcomes, including how they work with parents and young people in doing so;
- Supporting pupils' and students' in moving between phases of education;
- Enabling pupils and students to prepare for adult life so they can go on to achieve good outcomes such as higher education, employment, independent living and participation in;
- Securing expertise among teachers, lecturers or other professionals to support children and young people with SEN – this should include expertise at three levels: awareness, enhanced and specialist;
- Assessing and evaluating the effectiveness of the provision they make for children and young people with SEN;

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- Enabling children and young people with SEN to have access to facilities and extra-curricular activities that are available to those who use the setting; and
- Supporting emotional and social development (this should include extra pastoral support arrangements for listening to the views of pupils and students with SEN and measures to prevent bullying).

The above will include arrangements for supporting children who are looked after by the local authority and have SEN.

In addition to the information in the local offer about the special educational provision the local authority expects to be available in early years providers, schools and post-16 institutions, schools are required to publish, under the *Special Educational Needs (Information) Regulations*, more detailed information about their arrangements for identifying, assessing and making provision for pupils/students with SEN. The school-specific information should reflect the local offer and elaborate on it. The local offer **must** make clear where this information can be found. The local offer should also make clear how young people and parents can find relevant information published by post-16 institutions about their SEN provision (see Chapter 5).

### **Early years**

When securing funded early education for two, three and four year-olds local authorities should promote equality and inclusion for children with disabilities or SEN. This will involve securing relevant expertise among early years providers and working with parents to ensure that appropriate provision is in place to enable each child to flourish. Local authorities **must** also secure sufficient childcare for working parents and **must** work with providers to plan and manage local provision to meet the needs of families and children in their area.

Local authorities should publish in their local offer information about:

- free early education places and eligibility criteria;
- childcare options available to parents including the range of expertise to support children with SEN;
- relevant services from other agencies such as Portage and the Early Support Programme;
- arrangements for identifying and assessing children's needs in the early years;
- support available to parents to aid their child's development at home; and

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- arrangements for reviewing children's progress, including progress checks and health and development reviews between the ages of 2 and 3.

### Other education provision

Information about educational provision should also include:

- The special educational provision (such as Area SENCOs, SEN support or learning support services, sensory support services or specialist teachers) made available to mainstream schools, early years providers, special units, alternative provision and other settings (including home-based services), whether provided by the local authority or others;
- Local arrangements for collaboration between institutions to support those with SEN (for example, cluster or partnership working between post-16 institutions or shared services between schools);
- The local authority's arrangements for providing top up funding for children and young people with high needs in mainstream and specialist settings;
- Where to find the list of non-maintained special schools and independent schools catering wholly or mainly for children with SEN, and Independent Specialist Colleges in England [and Wales] which have been approved by the Secretary of State to give parents and young people a statutory right to request that they are named on an EHC plan;
- Support for young offenders who have been released from custody. This should include support offered by Youth Offending Teams in relation to education.

### Health

Building on the Joint Strategic Needs Assessment the local offer **must** include information about health care provision for children and young people with SEN. This should include:

- speech and language and other therapies such as physiotherapy and occupational therapy and services relating to mental health;
- services assisting relevant early years providers, schools and post-16 institutions to support children and young people with medical conditions;
- health and care provision commonly accessed by children and young people with SEN such as wheelchair services and community equipment, children's community nursing, Portage, continence services;

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- palliative and respite care and other provision for children with complex health needs;
- other services, such as emergency care provision;
- provision for children and young people's continuing care arrangements (including information on how these are aligned with the education health and care planning process locally - described in Chapter 3); and
- support for young people when moving between healthcare services for children to healthcare services for adults.

Local authorities and their partner clinical commissioning groups should work together to ensure that this information is available through the local offer.

### **Social care**

The local offer **must** include information about social care services supporting children and young people with SEN. This should include:

- services provided in accordance with section 17 of the Children Act 1989 for children and young people with SEN;
- childcare;
- leisure activities;
- support for young people when moving between social care services for children to social care services for adults, including information on how and when the transfer is made;
- support for young people in living independently and finding appropriate accommodation;

and must include;

- short breaks for disabled children, young people and their families

The Care Bill will place a duty on local authorities to provide an information and advice service on the adult care and support system. This should include information on types of care and support, local provision and how to access it, accessing financial advice in relation to it and how to raise concerns. Local authorities should indicate in their local offer where this information can be found.

Local authorities **must** provide a range of short breaks for disabled children, young people and their families, and prepare a short breaks duty statement giving details of



the local range of services and how they can be accessed, including any eligibility criteria<sup>4</sup>. Local authorities **must** publish a short breaks statement on their website and review it on a regular basis, taking account of the needs of local parents and carers. The statement will therefore form a core part of the local offer.

## Training and apprenticeships

The local offer **must** identify training opportunities, apprenticeships, traineeships and Supported Internships available to young people in the area to provide a smooth transition from education into employment. This should include information about additional support available to young people – for example via the Department for Work and Pensions' Access to Work fund – such as teaching and learning support, job coaching in the workplace, and provision of specialist equipment. Local authorities should engage with providers of Apprenticeships and Traineeships and educational institutions offering Supported Internships to ensure that the information they publish is of good quality and to identify providers who have particular expertise relevant to young people with SEN.

Local authorities **must** include information on how young people can apply for these opportunities or make clear in their local offer where this information can be found. The information should include any entry requirements, including age limits and educational attainment.

## Transport

Transport can be an important factor in the support for children and young people with SEN. The local offer **must** include information about arrangements for transport provision for those up to age 25 with an EHC plan, including local authorities' policy statements.

Local authorities **must** ensure that suitable travel arrangements are made where necessary to facilitate an eligible child's attendance at school. Section 508B of the Education Act 1996 requires local authorities to make such school travel arrangements as they consider necessary for children within their area. Such arrangements **must** be provided free of charge. Section 508C of the Act gives local authorities discretionary powers to make school travel arrangements for other children not covered by section 508B; such transport does not have to be provided free of charge.

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<sup>4</sup> The Breaks for Carers of Disabled Children Regulations 2011

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Local authorities **must** publish a transport policy statement each year setting out the travel arrangements they will make to support young people aged 16-19 and learners with learning difficulties and/or disabilities (LLDD) aged up to 25, to access further education. This should include any arrangements for free or subsidised transport.

Local authorities will wish to include in their local offer information about:

- any specific arrangements for specialised transport (e.g. specially fitted buses);
- any support available from the local authority or others with transport costs;
- any support that is offered to children and young people to help them use transport, including public transport; and
- any training given to aid independent travel.

### **Support available to children and young people to help them prepare for adulthood**

Local authorities **must** set out in the local offer the support available to help children and young people with SEN move into adulthood. Support should reflect evidence of what works in achieving good outcomes and include information about preparing for and finding employment, finding somewhere to live, and participating in the community.

Preparing for and finding employment should include information about:

- support for transition into employment such as Supported Internship study programmes and how to apply for them;
- Apprenticeships and Traineeships;
- support available from job coaches and how to obtain it;
- support available from employment agencies;
- support available from Year 9 to help children and young people plan their careers, including signposting to where they can obtain information and advice about setting up their own enterprise; and
- financial support available, including from the Department for Work and Pensions, when they are looking for work or once they are employed.

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Finding somewhere to live should include information about:

- finding accommodation - including information about different housing options such as social housing, housing association accommodation, private renting, shared housing and shared ownership;
- how to apply for accommodation, and where to get financial and other support (such as a personal assistant, assistive technology or modifications to a home) and more detailed advice on accommodation;
- advice, for people eligible for social care or health support, about what support is available to help them personally, for example in managing their personal budget or recruiting a personal assistant; and
- opportunities and support to learn the skills needed to live in supported, semi supported or independent accommodation.

Participating in the community should include information about:

- leisure and social activities, including opportunities for influencing local decision making;
- how young people can access mainstream community facilities and local youth services (for example, access to staff with expertise in supporting young people with different needs);
- volunteering opportunities and the support available to access them;
- care support available to help young people access social opportunities (e.g. a personal assistant or assistive technology) and develop friendships, and how to apply for that support; and
- support in using the internet and social media to find information and develop and maintain friendships, including where they can go for guidance on using the internet safely and how to protect themselves against cyber-bullying and exploitation.

The Care Bill will require local authorities to establish and maintain a service for providing people in its area with information and advice about the adult care and support system.

## Information about how to seek an Education, Health and Care assessment

The local offer **must** include information about how to request an assessment for an EHC plan, which is likely to happen where special educational provision currently being made for them by their early years setting, school or college, from their own resources, is not enabling the child or young person to make adequate progress.

The information should include:

- how an assessment can be requested;
- how the local authority will consider a request for an assessment and inform parents and young people of their decision;
- how parents, children and young people will be involved in the assessment process;
- what support is available to help families during the assessment and planning process;
- the timescales involved in the assessment process;
- the process for making an EHC plan;
- the option of having a personal budget, who is eligible, how to ask for one and what information, advice and support is available for securing and managing a personal budget; and
- arrangements for complaints, mediation, disagreement resolution and appeals.

## Information, advice and support

The local offer should provide information for parents and young people about where to get advice, information and support.

All local authorities **must** have an impartial Information, Advice and Support (IAS) service and should ensure that advice and guidance for young people is tailored appropriately for them (see section 3.3).

Clear, comprehensive and accessible information should be published about the support available to children and young people with SEN and opportunities to participate in strategic decision making. Local authorities and CCGs **must** ensure that they publicise the availability of Information Advice and Support and participation

opportunities in strategic decision-making. Early Years providers, schools, colleges, and other relevant services should tell parents and young people about the availability of local, impartial information, advice and support, this should include for young people access to IAS on preparing for adulthood. This includes IAS on securing paid employment and/or meaningful occupation, independent living and finding accommodation, and participating actively in their local communities.

### 5.3 Publishing the local offer

Local authorities **must** make their local offer widely accessible and on a website. They must publish their arrangements for enabling those without access to the web to get the information. They **must** also enable access for different groups, including disabled people and those with different types of SEN.

### 5.4 Preparing and reviewing the local offer

#### Involving children and young people with SEN and parents

Local authorities **must** involve children and young people with SEN and the parents of children with SEN in developing and reviewing the local offer. Many local authorities and parents and carers organisations refer to this as 'co-production'. Local authorities are best placed to decide exactly how to do this but they **must** involve children and young people with SEN and their parents in:

- planning the content of the local offer;
- deciding how to publish the local offer;
- reviewing the local offer and enabling them to give feedback on the local offer.

Local authorities should publicise in their local offer **the ways** in which they will involve children, young people and parents in developing and reviewing it. Children, young people and parents should receive support to enable them to contribute to decision making at this strategic level and the local offer should include details of this support, which may include Parent Carer Forums and local voluntary organisations.

Those with SEN differ in personal circumstances and in their interests and capacities. The local authority's approach to involving them in developing and reviewing the local offer should recognise this and ensure that children and young people:

- have support to contribute their views and be involved in decision making, for example by asking them what support they may require to participate, such as

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the use of communication aids, personal assistance, adjustments to the time allowed for discussion, the timing and location of meetings, and special transport;

- have information in their preferred communication methods about how their views and contributions will be used;
- can be confident that jargon, acronyms and technical terms will be avoided and where particular terms are unavoidable that they will be explained; and
- receive feedback about what will happen as a result of their involvement.

### **Involving schools, colleges, health services and others**

Local authorities and their local partners **must** cooperate with each other in the development and review of the local offer. This is essential so that the local offer provides a comprehensive, transparent and accessible picture of the range of services available to local children and young people with SEN and their parents.

Local partners who are required to cooperate with the local authority include:

- The governing bodies of schools that the local authority maintains;
- The proprietors of academies and free schools in the local authority's area;
- The proprietors of non-maintained special schools that are in the local authority's area or provide education or training for children and young people in the local authority's area;
- The governing bodies of further education institutions that are in the local authority's area or are attended or likely to be attended by young people from their area;
- The management committees of pupil referral units that are in the local authority's area or are attended or likely to be attended by young people from their area;
- The proprietors of independent specialist colleges and independent schools specially organised to make provision for children and young people with SEN which have been included on the list of institutions approved by the Secretary of State for the purpose of enabling parents and young people to request that they are named on an Education, Health and Care Plan and are in the local authority's area or are attended or likely to be attended by children and young people in their area;

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- Any other person (other than a school or college) that makes special educational provision for children or young people for whom the local authority is responsible, including providers of relevant early education;
- Youth offending teams that the local authority thinks has responsibilities in relation to children and young people for whom they are responsible;
- The NHS Commissioning Board and any relevant health bodies including:
  - clinical commissioning groups:
    - whose areas coincide with or fall within the local authority's area; or
    - which has a duty under section 3 of the National Health Service Act 2006 to arrange for the provision of services for any children or young people for whom the local authority is responsible;
  - an NHS Trust or NHS Foundation Trust which provides services in the local authority's area or for children and young people for whom the authority is responsible; or
  - a Local Health Board with functions in relation to children and young people for whom the local authority is responsible.

The LA should also have engagement with the providers of relevant early years education, particularly those in receipt of early education funding.

The local authority **must** also ensure that all its officers co-operate with each other in respect of the local offer. This **must** include those officers whose roles will contribute to helping young people make a successful transition to adulthood – for example those working in housing and economic regeneration.

### Keeping provision under review

Local authorities **must** keep under review the special educational and social care provision available in their area and outside their area for children and young people with SEN for whom they are responsible in consultation with:

- children and young people with SEN and their parents;
- the governing bodies of maintained schools (including nursery schools) in their area;
- the proprietors of academies and free schools in their area;

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- the governing bodies, proprietors or principals of post-16 institutions in their area;
- the governing bodies of non-maintained special schools in their area;
- the advisory boards of children's centres in their area;
- the providers of relevant early years education in their area;
- the governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that they think are, or are likely, to be attended by children or young people for whom they are responsible;
- youth offending teams that they think have functions in relation to children and young people for whom they are responsible; and
- other people they think it is appropriate to consult.

The duty to keep their special educational provision and social care provision under review includes the sufficiency of that provision. When proposing any reorganisation of SEN provision local authorities should demonstrate to parents and the local community how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with SEN.<sup>5</sup>

Local authorities should link such reviews, and the strategic needs assessments of health needs carried out with their partner CCGs (see Chapter 4), to the development and review of their local offer. This will help to identify gaps in provision and ensure that the local offer is responsive to the needs of local children and young people with SEN and their families.

### **Publishing comments about the local offer**

Local authorities **must** seek and publish comments about their local offer, including those received from or on behalf of children and young people with SEN and the parents of children with SEN. It is up to local authorities to decide how best to do this in consultation with children and young people with SEN and their parents, representative organisations such as Parent Carer Forums and local organisations providing information, advice and support to parents, children and young people. They should make clear how they have sought comments about the local offer. Local authorities **must** publish a summary of comments at least annually and **must** ensure

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<sup>5</sup> *Planning and Developing Special Educational Provision*, DCSF (2007)



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that comments are published in a form that does not enable any individual to be identified.

Comments **must** be published if they relate to:

- the content of the local offer, which includes the quality of existing content and any gaps in the content;
- the accessibility of information in the local offer;
- how the local offer has been developed or reviewed.

Local authorities **must** also publish their response to those comments and should publish an explanation of the action they are taking to respond to them. Local authorities are not expected to publish responses to every comment individually but could, for example, adopt a 'you said, we did' approach. They are not required to publish abusive or vexatious comments.

Local authorities should use these comments when developing and reviewing the local offer and should feedback comments to commissioners of services where appropriate. Where comments are about particular services, local authorities should also share those comments with the services involved.

## 6 Early years, schools, colleges and other education and training providers

*[Draft regulations for consultation relevant to this chapter are:*

- Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;
- The Special Educational Needs (SEN co-ordinators) Regulations, Clause 62;
- The Special Educational Needs (Information) Regulations, Clause 65.]

### 6.1 Improving outcomes for all – high expectations for children and young people with SEN

All children and young people are entitled to an education that enables them to:

- achieve their best;
- become confident individuals living fulfilling lives; and
- make a successful transition into adulthood, whether into employment, further or higher education or training.

The majority of children and young people with SEN have their needs met through mainstream education providers and will not need Education, Health and Care plans (EHC plans), described in Chapter 7. Mainstream providers have general duties under Part 3 of the Children and Families Bill.

This chapter provides information about how mainstream providers and specialists can ensure that they improve attainment for children and secure good outcomes whether or not they have an EHC plan.

#### Key Requirements

Maintained nursery schools, mainstream schools (maintained schools and academies and free schools that are not special schools), 16 – 19 academies, further education institutions, pupil referral units and alternative provision academies **must:**

- use their best endeavours to ensure that the necessary provision is made for any individual who has SEN;

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- co-operate generally with their local authority in developing the local offer (described in Chapter 5).

Maintained nursery schools and mainstream schools, including academies and free schools, **must** also:

- designate an appropriate member of staff (the SEN co-ordinator, or SENCO) as having responsibility for co-ordinating provision for children with SEN;
- ensure that children with SEN take part in the activities of the school together with children who do not have SEN as far as possible;
- publish information on the school or nursery's SEN policy, and the measures and facilities put in place to assist access for disabled children.

Ofsted registered early years providers have a duty under the statutory framework for the Early Years Foundation Stage (EYFS) to have and implement a policy, and procedures, to promote equality of opportunity for children in their care, including support for children with SEN or disabilities.

Educational settings also have duties under the Equality Act 2010. In particular, they **must** make reasonable adjustments for disabled children and young people to help alleviate any substantial disadvantage they experience because of their disability, and they **must not** discriminate against or harass them. Further information on this is set out in section 6.3.

All settings should involve the child, young person and their parent as fully as possible in the decisions that affect them.

## 6.2 Support for children and young people with SEN

All early years and education providers are responsible for meeting special educational needs. The governing bodies, proprietors and management committees of mainstream schools, maintained nursery schools, pupil referral units (PRU) and institutions within the further education sector **must** use their 'best endeavours' to secure the special educational provision called for by a child or young person's SEN.

Special educational provision is educational or training provision that is additional to or different from that made generally for others of the same age. This means provision that goes beyond the differentiated approaches and learning arrangements normally provided as part of high quality, personalised teaching. It may take the form of additional support from within the setting or require the involvement of specialist staff or support services. As part of using its 'best endeavours', an education setting should have arrangements in place to identify the need for and secure such

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provision, whether through expertise and resources available within the setting or by drawing on support from outside services. The approach set out in this chapter sets out key elements of how this should work in practice.

The benefits of early identification are widely recognised; identifying need at the earliest point and then providing good interventions, improves long-term outcomes for the child or young person.

While for many children, SEN can be identified at birth or at an early age, some difficulties only become evident as children and young people grow. It is therefore important that all those who work with children and young people are alert to emerging difficulties and respond early. In particular, parents know their children best, and it is important that all professionals listen and understand when parents express concerns about their child or young person's development. They should also listen to and address any concerns raised by children and young people themselves.

Where a SEN is identified, early years providers, schools and colleges should put appropriate evidence-based interventions in place. These should be provided as part of a graduated approach, which includes regular review of the progress made and adaptations to the support provided as required.

Plans for the use of support should relate to a clear set of expected outcomes, which should include stretching and relevant academic and developmental targets (including for older children, and young people, targets around preparing for adulthood). Progress towards these outcomes should be tracked and reviewed regularly, at least termly.

These outcomes are most effective where they reflect the views, wishes and feelings of children and young people and their families.

In schools, support should be planned and reviewed by the class or subject teacher, in collaboration with parents, SENCOs, and, where appropriate, the pupil themselves.

Where a maintained school, maintained nursery school, academy or Pupil Referral Unit begins to make special educational provision for a child or young person without an EHC plan they **must** tell the child's parent or the young person that such provision is being made. Involving parents effectively in the setting and review of outcomes from the outset leads to better progress and improved attainment overall.

In colleges, planning and reviews of SEN support should closely involve the student, parents where appropriate, teaching and support staff and a member of staff with oversight of additional SEN support, along with any other relevant professionals.

## 6.3 The four areas of special educational need

### Areas of special educational need

Special educational needs and provision can be considered as falling under four broad areas.

1. Communication and interaction
2. Cognition and learning
3. Social, mental and emotional health
4. Sensory and/or physical

Many children and young people have difficulties that fit clearly into one of these areas; some have needs that span two or more areas; for others the precise nature of their need may not be clear at the outset. It is therefore important to carry out a detailed individual assessment of each child or young person and their situation at the earliest opportunity to make an accurate assessment of their needs. Making provision and reviewing how effective it is in securing progress can itself be part of the effective assessment of need, informing the next steps in the graduated approach. It may be necessary to test out interventions as part of this process, both to judge their effectiveness for the individual and provide further information about the precise nature of the needs. Practitioners may need training in the use of evidence-based programmes and advice and support on the effective use of specific interventions may need to be sought from external specialists.

Any necessary additional or different provision identified by review should be provided in a timely way. Young people, children and their parents are an essential part of this process.

In all circumstances, schools, colleges, early years and other providers should ensure that they are providing good teaching. The quality and appropriateness of the overall provision should be kept under regular review and its impact on the number of children or young people identified with SEN should be monitored.

Behavioural difficulties do not necessarily mean that a child or young person has a SEN and should not automatically lead to a pupil being registered as having SEN. However consistent disruptive or withdrawn behaviours can be an indication of unmet SEN, and where there are concerns about behaviour, there should be an assessment to determine whether there are any causal factors such as undiagnosed learning difficulties, difficulties with communication or mental health issues. If it is thought housing, family or other domestic circumstances may be contributing to the

presenting behaviour a multi-agency approach, supported by the use of the Common Assessment Framework (CAF) may be appropriate. In all cases, early identification and intervention can significantly reduce the need for more expensive interventions or sanctions at a later stage.

The identification and assessment of the SEN of children or young people whose first language is not English, requires particular care. Schools, colleges, early years and other providers should look carefully at all aspects of a child or young person's performance in different areas of learning and development or subjects to establish whether lack of progress is due to limitations in their command of English or if it arises from a SEN or both.

### **1) Communication and interaction**

Children and young people with SEN may have difficulties in one or more of the areas of speech, language and communication. These children and young people need help to develop their linguistic competence in order to support their thinking, as well as their communication skills. Specific learning difficulties such as dyslexia or a physical or sensory impairment such as hearing loss may also lead to communication difficulties.

Those with speech, language and communication needs (SLCN) cover the whole ability range. They find it more difficult to communicate with others. They may have problems taking part in conversations, either because they find it difficult to understand what others say or because they have difficulties with fluency and forming sounds, words and sentences. It may be that when they hear or see a word they are not able to understand its meaning, leading to words being used incorrectly or out of context and the child having a smaller vocabulary. It may be a combination of these problems. For some children and young people, difficulties may become increasingly apparent as the language they need to understand and use becomes more complex.

Provision for children and young people with communication and interaction difficulties should reflect their likely need for support in developing social relationships and their increased risk of emotional or mental health problems. It may also cover support in making progress in related areas of learning such as literacy. Interventions might include creating rich oral language environments, individual support and augmentative and alternative means of communication.

Children and young people with an Autism Spectrum Disorder (ASD), including Asperger's Syndrome and Autism, have difficulty in making sense of the world in the way others do. They may have difficulties with communication, social interaction and imagination. In addition they may be easily distracted or upset by certain stimuli, have problems with change to familiar routines or have difficulties with their co-

ordination and fine-motor functions. Interventions will need to take account of their individual sensory needs and requirements. Seeking the insights of parents, carers and young people themselves about their particular sensibilities can be especially important to achieve this.

## **2) Cognition and learning**

Children and young people with learning difficulties will learn at a slower pace than other children and may have greater difficulty than their peers in acquiring basic literacy or numeracy skills or in understanding concepts, even with appropriate differentiation. They may also have other difficulties such as speech and language delay, low self-esteem, low levels of concentration and under-developed social skills.

Children and young people who have a learning difficulty need more detailed differentiation and the curriculum set out in smaller steps. They may need more practical activities than their peers to support the development of abstract concepts. They may require specific programmes to support their progress in developing literacy and numeracy skills. The level of support required will depend on the severity of the child or young person's cognitive difficulty and any associated needs that compound their difficulties in accessing the curriculum, such as physical impairments or communication difficulties.

Children and young people with a learning difficulty are at increased risk of developing a mental health problem. They may need additional support with their social development, self-esteem and emotional well-being. This may be through small group work on social skills, through peer group support and through regular and positive feedback on their progress.

Children and young people with severe learning difficulties (SLD) have significant intellectual or cognitive impairments and are likely to need support in all areas of the curriculum. They may have difficulties in mobility and co-ordination, communication and perception, and the acquisition of self-help skills. Children and young people with SLD are likely to need support to be independent. Those with profound and multiple learning difficulties (PMLD) have severe and complex learning difficulties as well as significant other difficulties such as a physical disability or a sensory impairment. They are likely to need sensory stimulation and a curriculum broken down into very small steps. These children and young people require a high level of adult support, both for their educational needs and for their personal care.

A child or young person with a Specific learning difficulty (SpLD) may have difficulty with one or more aspects of learning. This includes a range of conditions such as dyslexia (difficulties with reading and spelling); dyscalculia (maths); dyspraxia (co-ordination) and dysgraphia (writing). A discrepancy between achievement and general intellectual ability may indicate that a child or young person has a SpLD,

although they can occur across the whole ability range. Poor behaviour prompted by particular activities (such as avoiding reading or writing) can also be an indicator of SpLD.

Children and young people with specific learning difficulties may need support in sequencing and organisational skills and appropriate IT equipment and software to support the development of their literacy skills.

### **3) Social, mental and emotional health**

For some children and young people, difficulties in their emotional and social development, can mean that they require additional and different provision in order for them to achieve. Children and young people who have difficulties with their emotional and social development may have immature social skills and find it difficult to make and sustain healthy relationships. These difficulties may be displayed through the child or young person becoming withdrawn or isolated, as well as through challenging, disruptive or disturbing behaviour.

A wide range and degree of mental health problems might require special provision to be made. These could manifest as difficulties such as problems of mood (anxiety or depression), problems of conduct (oppositional problems and more severe conduct problems including aggression), self-harming, substance abuse, eating disorders or physical symptoms that are medically unexplained. Some children and young people may have other recognised disorders such as attention deficit disorder (ADD), attention deficit hyperactive disorder (ADHD), attachment disorder, autism or pervasive developmental disorder, an anxiety disorder, a disruptive disorder or, rarely, schizophrenia or bipolar disorder.

Schools, colleges and early years providers should identify clear processes to consider how they will support such children, as well as how they will manage the effect of any disruptive behaviour so it does not adversely affect other pupils. Many schools and colleges offer pastoral support, which may include access to counselling sessions, to help their pupils and students with emotional, social or mental health difficulties. This should be described in their published SEN policy and schools should ensure a solid evidence base for any interventions offered. Staff may need training and support to understand the nature and extent of problems that require more specialist intervention. Where more specialist provision is required, schools, colleges and early years providers should have clear arrangements in place with local health partners and other organisations for making appropriate referrals to Child and Adolescent Mental Health Services (CAMHS). This might include schools and colleges commissioning specialist CAMHS directly. It is best practice for CAMHS to offer a 'triage' service to identify and provide for children and young people who need specialist provision very quickly. Where needs are less urgent, this



service can signpost them to appropriate sources of support whether provided by CAMHS or other services.

#### 4) Sensory and/or physical needs

There is a wide range of sensory and physical difficulties that affect children and young people across the ability range. Many children and young people require minor adaptations to the curriculum, their study programme or the physical environment. Many such adaptations may be required as reasonable adjustments under the Equality Act 2010. The Department publishes guidance on these duties and further details can be found later in this section.

Some children and young people require special educational provision. It is this group that should be identified as having a SEN.

Children and young people with a visual impairment (VI) or a hearing impairment (HI) may require specialist support and equipment to access their learning. Children and young people with a Multi-Sensory Impairment (MSI) have a combination of visual and hearing difficulties, which makes it much more difficult for them to access the curriculum or study programme than those with a single sensory impairment. Some children and young people with a physical disability (PD) require additional on-going support and equipment to access all the opportunities available to their peers.

### Disabled children and young people

Many disabled children and young people also have a SEN. Where this is the case, access arrangements and other adjustments should be considered as part of SEN planning and review. However it may be that the steps to ensure access to mainstream education and related opportunities are sufficient to mean that special education provision does not need to be made. The specific duties that schools, early years providers, post-16 institutions and local authorities have towards disabled children and adults are included in the Equality Act 2010 the key elements are as follows:

- They **must not** discriminate against, harass or victimise disabled children and young people;
- They **must** make reasonable adjustments to ensure that disabled children and young people are not at a substantial disadvantage compared with their peers. This duty is anticipatory: adjustments must be planned and put in place in advance, to prevent that disadvantage.

The duties on early years providers that are not schools cover discrimination in the provision of services: the terms on which services are provided; the termination of a

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service; and any other detriment. Early years providers that are not schools are required to make reasonable adjustments to procedures, criteria and practices; by the provision of auxiliary aids and services; and by physical alterations.

The duties on schools cover discrimination in admissions; the provision of education and other benefits, facilities and services; exclusions and any other detriment. Schools are required to make reasonable adjustments to procedures, criteria and practices and by the provision of auxiliary aids and services. Schools **must** also publish accessibility plans (and local authorities, accessibility strategies) setting out how they plan to increase access, for disabled pupils, to the curriculum, the physical environment and to information. Plans and strategies **must** be reviewed and revised every three years.

Governing bodies and proprietors **must** also publish information about the arrangements for the admission of disabled children, the steps taken to prevent disabled children being treated less favourably than others, the facilities provided to assist access of disabled children, and their accessibility plans. The information published **must** be updated annually and any changes to the information occurring during the year must be updated as soon as possible.

The duties on Further Education Institutions within the Post-16 sector cover: admission; the education, course or qualifications offered to the student; and access to recreational or training facilities. Further Education Institutions **must** make reasonable adjustments to procedures, criteria and practices, by the provision of auxiliary aids and services and by physical alterations.

Further Education Institutions, local authorities and maintained schools, maintained nursery schools and academies and free schools are covered by the public sector equality duty and must have regard to the need to eliminate discrimination, promote equality of opportunity and foster good relations between disabled and non-disabled children and young people.

The Department publishes detailed guidance for schools on their duties under the Equality Act 2010 which is available on [the Department's website](#).

The Equality and Human Rights Commission also provides technical guidance for school and FE institutions and guidance on reasonable adjustments.

### 6.4 Early years

All early years providers are required to have and implement a policy and procedure to promote equality of opportunity for children in their care. This includes support for

children with SEN and disabilities. These requirements are set out in the Early Years Foundation Stage framework.

## Identifying needs in the early years

### From birth to two

Many of the more complex needs, developmental and sensory, are identified at birth. Parents' early observations of their child are crucial. Health assessments, such as the hearing screening test which is used to check the hearing of all new-born babies, enable very early identification of a range of medical and physical difficulties. Health services, including paediatricians, the family's general practitioner, and health visitors, should work with families, and support them in understanding their child's needs and working on their behalf to ensure they can access early support. Where a health body is of the opinion that a young child under compulsory school age has or probably has SEN they must inform the child's parent and bring the child to the attention of the appropriate local authority. The health body must also give the parent the opportunity to discuss their opinion and let them know about any voluntary organisations that are likely to be able to provide advice or assistance. This includes the educational advice, guidance and intervention to be put in place at an early point and before the child starts school.

This support can take a number of forms. Examples are:

- Specialist support from educational psychologists or specialist teachers such as a teacher of the deaf or visually impaired. These specialists may visit families at home, their role being to support parents and the child with early learning programmes and approaches. They provide practical support, answering questions, discussing communication and clarifying needs.
- Home-based programmes such as Portage offer a carefully structured system to help parents support their child's early learning and development.
- A professional or trained, independent volunteer providing a single point of contact or key working.

The Early Support Programme support the better delivery and coordination of services for disabled children, young people and their families.

Information about these services should be included in the local offer, and be available from Parent Partnership and other local impartial information and advice services.

## **Early Years Provision**

Most young children aged 0-5 attend some form of early years provision. The Early Years Foundation Stage (EYFS) sets the standards that all Ofsted registered early years providers, and schools (offering early years provision) must meet to ensure that children learn and develop well and are kept healthy and safe. This includes on-going assessment of children's progress. Early years providers and educational settings should have a clear approach to assessing SEN that is known by all staff. This should be part of the setting's overall approach to monitoring the progress and development of all children.

The EYFS includes two specific points for providing written assessments for parents and other professionals. These are when the child is aged two and when the child turns five and are detailed below:

### **Progress Check at age two**

When a child is aged between two and three, early years practitioners must review progress, and provide parents and/or carers with a short written summary of their child's development, focusing in particular on: communication and language; physical development; personal, social and emotional development. This progress check must identify the child's strengths, and any areas where the child's progress is lower than expected. If there are significant emerging concerns (or an identified special educational need or disability) practitioners should develop a targeted plan to support the child involving other professionals (for example the 'setting SENCO or 'Area SENCO') as appropriate. The summary must highlight: areas in which a child is progressing well; areas in which some additional support might be needed; any areas where there is a concern that a child may have a developmental delay (which may indicate a special educational need or disability). It must describe the activities and strategies the provider intends to adopt to address any issues or concerns. If a child moves settings between the ages of two and three it is expected that the progress check will be undertaken in the setting where the child has spent most time.

Health visitors currently check children's physical development milestones between ages 2 to 3 as part of the universal Healthy Child Programme. It is proposed to introduce an integrated review from 2015 that will cover the development areas in the Healthy Child Programme 2 year review and the EYFS 2 year progress check in a coherent way. The integrated review will: identify the child's progress, strengths and needs at this age in order to promote positive outcomes in health and wellbeing, learning and development; enable appropriate intervention and support for children and their families, where progress is less than expected; and generate information which can be used to plan services and contribute to the reduction of inequalities in children's outcomes.

## **Assessment at the end of the EYFS – The Early Years Foundation Stage Profile (EYFSP)**

In the final term of the year in which a child turns five the EYFS profile must be completed for each child. The profile provides parents and carers, practitioners and teachers with a well-rounded picture of a child's knowledge, understanding and abilities. A profile must be completed for all children, including those with SEN. The profile should inform plans for future learning and identify any additional support needs.

## **SEN support in the early years**

In addition to the formal checks, early years practitioners working with children should monitor and review the progress and development of all children. Practitioners should particularly consider a child's progress in communication and language, physical development or personal, social and emotional development – the prime areas of learning and development.

Where progress gives cause for concern practitioners should work in partnership with parents and/or carers to develop a plan to ensure children with SEN receive the right levels of support for their future learning and development.

Early years settings should adopt a graduated approach: a cycle of assessment, planning and reviewing their actions in increasing detail and with increasing frequency, to identify the best way of securing good progress. At each stage parents should be engaged with the setting, contributing their insights to assessment and planning. Intended outcomes should be shared with parents and reviewed with them, along with action taken by the setting, at agreed times.

The graduated approach should be led and coordinated by the setting SENCO working with and supporting practitioners in the setting and informed by Early Years Foundation Stage materials, and Early Support resources.<sup>6</sup> Settings should draw on those with specialist expertise beyond the setting if, at any stage, a child is not developing as expected or is not responding to action taken by the setting. Settings should use it to help in identifying those children whose need for long-term support is such that an Education Health and Care Plan might be required.

Where practitioners believe that a child has or may have SEN, and after discussing these concerns with the child's parent or carer, they should notify the local authority that is responsible for the child.

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<sup>6</sup> Information is available at the [National Children's Bureau website](#)

## The role of the SENCO in early years provision

All settings are expected to have a member of staff who acts as special educational needs co-ordinator (SENCO).

A maintained nursery **must** ensure that there is a qualified teacher designated SENCO in order to ensure the detailed implementation of support for children with SEN. This individual should also have the prescribed qualification for SEN Co-ordination or relevant experience.

The EYFS framework requires other early years providers to have an SEN policy which should include the name of the SENCO. . In the case of accredited childminders who are registered with a childminder agency or who are part of an approved network, the SENCO role may be shared between individual childminders and the agency or coordinator of the network.

The role of the SENCO involves:

- ensuring all practitioners in the setting understand their responsibilities to children with SEN and the setting's approach to identifying and meeting SEN;
- advising and supporting colleagues;
- ensuring parents are closely involved throughout and that their insights inform action taken by the setting;
- liaising with professionals from beyond the setting.

When securing funded early education for two-, three- and four-year-olds local authorities should promote equality and inclusion for children with disabilities or special educational needs. This includes removing barriers of access to early education and working with parents to give each child support to fulfil their potential.

Local authorities must ensure that all providers in the maintained and private, voluntary and independent sectors that they fund to deliver funded early education places are aware of the requirement on them to have regard to the Special Educational Needs Code of Practice and that they effectively meet the needs of children with special educational needs (SEN) and disabilities.

To support this approach, and to fulfil their role in identifying and planning for the needs of children with SEN, local authorities should ensure that there is sufficient expertise and experience amongst local early years providers to support children with SEN. Local authorities often make use of Area SENCOs to provide advice and guidance to private and voluntary early years providers on the development of inclusive early learning environments. The Area SENCO helps make the links

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between education, health and social care to facilitate appropriate early provision for children with SEN and their transition to compulsory schooling.

Typically, the role of the Area SENCO includes:

- providing advice and practical support to early years providers about approaches to the identification, assessment and intervention within the SEN Code of Practice;
- providing day to day support for setting based SENCOs in drawing up and implementing an SEN policy;
- strengthening the links between the settings, parents, schools, social care and health services;
- developing and disseminating good practice;
- supporting the development and delivery of training both on an individual setting and wider basis;
- developing links with existing SENCO networks to support smooth transitions to school nursery and reception classes;
- informing and working with local impartial Information, Advice and Support services, to promote effective work with parents of children in the early years.

The SENCO will also play an important part in planning for children with SEN to transfer between early years provision and schools. Where an Area SENCO is involved it will be helpful for them to have made strong links with education health and social care services and be able to help inform the transition planning.

### **6.5 Schools**

Teachers are responsible and accountable for the progress and development of the pupils in their class, even where pupils access support from teaching assistants or specialist staff. Where a pupil is not making adequate progress, teachers and SENCOs and parents should collaborate on problem-solving, planning support and teaching strategies for individual pupils.

High quality teaching, differentiated for individual pupils, is the first step in responding to pupils who have or may have SEN. Additional intervention and support cannot compensate for a lack of good quality teaching. The majority of pupils can make progress through such teaching. Schools should regularly and carefully review the quality of teaching for pupils at risk of underachievement. This includes

reviewing teachers' understanding of strategies to identify and support vulnerable pupils and their knowledge of the special educational needs most frequently encountered.

The quality of teaching for pupils with SEN, and the progress made by pupils, should be a core part of the school's performance management arrangements and its approach to professional development for all teaching and support staff. SEN should not be regarded as sufficient explanation for low achievement, nor should there be an assumption that all children will progress at the same rate or that all children falling behind their peers have SEN.

## Identifying needs in schools

The identification of SEN should be built into the overall approach to monitoring the progress and development of all pupils.

Schools should assess each pupil's current skills and levels of attainment on entry.

Class and subject teachers, supported by the senior leadership team, should make regular assessments of progress for all pupils. Where pupils are falling behind or making inadequate progress given their age and starting point they should be given extra support.

At this early stage teachers may suspect that a pupil has SEN. While informally gathering evidence (including the views of the pupil and their parents) schools should not delay putting general teaching support in place where required. The pupil's response to such support can help identify their particular needs.

Adequate progress can include progress which:

- is similar to that of peers starting from the same baseline;
- matches or betters the child's previous rate of progress;
- closes the attainment gap between the child and their peers;
- prevents the attainment gap growing wider.

Where pupils continue to make inadequate progress, despite high-quality teaching targeted at their areas of weakness, the class teacher, working with the SENCO, should assess whether the child has a significant learning difficulty. Where this is the case, then there should be agreement about the SEN support that is required to support the child.



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Identification should include the use of high quality formative assessment, as well as effective tools and early assessment materials. For higher levels of need, schools should have arrangements in place to draw on more specialised assessments from external agencies and professionals. These arrangements should be agreed and set out as part of the local offer. The school's approach to identifying and assessing SEN should be published as part of the information under the *Special Educational Needs (Information) Regulations*.

The phonics screening check is a short assessment of all pupils in mainstream schools in year 1 (and those pupils in year 2 who did not meet the expected standard during year 1). It can provide additional information, as part of the overall approach set out above, to help identify a child who is experiencing difficulties and may be making inadequate progress. The phonics screening check should not, in and of itself, be used as an assessment of special educational needs. Additional guidance on responding to the results of the check is available from the [Department for Education's website](#).

As part of their approach to school improvement, school leaders and teaching staff, including the SENCO, should identify any patterns in the identification of SEN both within the school and in comparison with national data, and use these to reflect on and reinforce the quality of teaching.

### **Requirements from the national curriculum**

Teachers should set high expectations for every pupil and aim to teach them the full curriculum, whatever their prior attainment. Teachers should use appropriate assessment to set targets which are deliberately ambitious. Lessons should be planned to address potential areas of difficulty and to ensure that there are no barriers to every pupil achieving. In many cases, such planning will mean that these pupils will be able to study the full national curriculum. Potential areas of difficulty should be identified and addressed at the outset of work.

### **SEN support in Schools**

Once a potential special educational need is identified, four types of action should be taken to put effective support in place. These actions form part of a cycle through which earlier decisions and actions are revisited, refined and revised with the growing understanding of the pupils' needs and of what supports the pupil in making good progress and securing good outcomes. This is known as the graduated approach; it draws on more detailed approaches, more frequent review and more specialist expertise in successive cycles in order to match interventions to the SEN of children and young people.

## **Assess**

Before identifying a child as needing SEN support the class teacher, working with the SENCO, should establish a clear analysis of the pupil's needs. This should draw on the teacher's assessment and experience of the pupil, as well as information from the school's core approach to pupil progress, attainment, and behaviour. It should also draw on the individual's development in comparison to their peers, the views and experience of parents, the child's own views and, if relevant, advice from external support services. Schools should take seriously any concerns raised by a parent. These should be recorded and compared to the setting's own assessment and information on how a child is developing. The main areas of need that characterise pupils with SEN are set out at **6.3**.

This assessment should be regularly reviewed. This will help to ensure that support is matched to need, and that a clear picture of the interventions put in place and their effect is developed. For some types of SEN, the way in which a pupil responds to an intervention can be the most reliable method of developing a more accurate picture of need.

In some cases, outside professionals from health or social services may already be involved with the child. These professionals should liaise with the school to help inform the assessments. Where these professionals are not already working with school staff the SENCO should contact them if the parents agree.

## **Plan**

Where it is decided to provide a pupil with SEN Support, the parents **must** be notified. The teacher and the SENCO should agree in consultation with the parent and the pupil the interventions and support to be put in place, as well as the expected impact on progress, development or behaviour, along with a clear date for review.

All teachers and support staff who work with the child should be made aware of their needs, the support provided and any teaching strategies or approaches that are required. This should also be recorded on the school's information system.

The support and intervention provided should be based on reliable evidence of effectiveness and be provided by staff with sufficient skills and knowledge.

## **Do**

The class or subject teacher should remain responsible for working with the child on a daily basis. Where the interventions involve group or one-to-one teaching away from the main class or subject teacher, they should still retain responsibility for the pupil, working closely with any teaching assistants or specialist staff involved, to plan

and assess the impact of interventions. The SENCO should support the class or subject teacher in the further assessment of the child's particular strengths and weaknesses, in problem solving and advising on the effective implementation of the support.

The support and intervention provided should be based on reliable evidence of effectiveness and be provided by staff with sufficient skills and knowledge.

### **Review**

The effectiveness of the support and the impact on the child's progress should be reviewed in line with the agreed date.

The impact of the support provided, along with the views of the pupil and their parents, should feed back into the analysis of the pupil's needs. The class or subject teacher, working with the SENCO, should revise the support in light of the pupil's progress and development, deciding on any changes to support and revised outcomes in consultation with the parent and pupil

### **Involving Specialists**

Where a child continues to make little or no progress, despite well-founded support that is matched to the child's area of need, the school should consider involving specialists, including those from outside agencies. The role and expectation of some of the key sources of external support are set out at 6.9.

Schools may involve specialists at any point to advise them on early identification of SEN and effective support. A school should always involve a specialist where a child continues to make little or no progress over a sustained period or where they continue to work at levels substantially below those expected of children of a similar age despite well-founded SEN support. The child's parents should always be involved in any decision to involve specialists. The involvement of specialists and what was discussed or agreed should be recorded and shared with the parent and teaching staff supporting the child in the same way as other SEN support.

The SENCO and class teacher, together with the specialists, should consider a range of well-founded and effective teaching approaches, appropriate equipment, strategies and interventions in order to support the child's progress. They should agree the outcomes to be achieved through the support, including a date by which progress will be reviewed.

Support should be adapted or replaced depending on how effective it has been in achieving the expected outcomes.

## **Involving parents and pupils in planning and reviewing progress**

Schools **must** provide an annual report for parents on their child's progress. Most schools will want to go beyond this and provide regular reports for parents on how their child is progressing.

Where a pupil is receiving SEN support, schools should meet parents at least termly to set clear goals, discuss the activities and support that will help achieve them, review progress and identify the responsibilities of the parent, the pupil and the school.

This meeting should be led by a teacher with good knowledge and understanding of the child or young person who is aware of their needs and attainment. This will usually be the class teacher or form tutor, supported by the SENCO. It should provide an opportunity for the parent to share their concerns and, together with the teacher, agree their aspirations for the child.

Conducting these meetings effectively involves a considerable amount of skill. As with the other aspects of good teaching for pupils with SEN, schools should ensure that teaching staff are supported to manage these conversations as part of professional development.

These meetings will need to allow sufficient time to explore the parents' views and to plan effectively. Meetings should, wherever possible, be aligned with the normal cycle of discussions with parents of all children; they will, however, be longer than most parent-teacher meetings.

The views of the child should be included in this planning. This could be through involving the child in all or part of the meeting, or gathering their views as part of the preparation for the meeting.

Following the meeting the teacher will need to inform all the appropriate school staff of the outcomes and agreed targets, as well as updating the pupil's record as appropriate.

## **Use of data and record keeping**

It is for schools to determine their own approach to record keeping. But the provision made for pupils with SEN should be accurately recorded and kept up to date. Ofsted will expect to see evidence of the support that is in place for pupils and the impact of that support on their progress as part of any school inspection. Ofsted publish more detail about their expectations in their inspection guidelines.

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Schools should particularly record details of additional or different provision (SEN support). This should form part of regular discussions with parents about the child's progress, expected outcomes from the support and planned next steps. They should ensure that they have accurate information to evidence the SEN support that has been provided over the pupil's time in the school, as well as its impact. A local authority that is considering or carrying out a statutory assessment of the pupil's needs, will wish to review such information.

Schools already use information systems to monitor the progress, behaviour and development of all pupils. Details of SEN, outcomes, teaching strategies and the involvement of specialists should be recorded as part of this overall approach.

Provision maps are a powerful way of showing all the provision that the school makes which is *additional to* and *different from* that which is offered through the school's differentiated curriculum. The use of provision maps helps SENCOs to maintain an overview of the collective programmes of individual children and young people and provides a basis for monitoring the levels of intervention and assessing their impact on progress.

A helpful range of further information and resources about provision mapping is available from the [Department for Education's website](#).

## Publishing information

### SEN information report

The governing bodies of maintained schools and maintained nursery schools and the proprietors of academy schools have a legal duty to publish information on their websites about the implementation of the governing body's or the proprietor's policy for pupils with SEN. The information published **must** be updated annually and any changes to the information occurring during the year must be updated as soon as possible. The information required is set out in the draft Special Educational Needs (Information) Regulations and reflects the information required for the local offer:

- identifying children and young people with SEN and assessing their needs;
- assessing and reviewing children and young people's progress towards outcomes, including the opportunities available to work with parents and young people as part of this assessment and review;
- supporting children and young people in moving between phases of education and in preparing for adulthood. As young people prepare for adulthood outcomes should reflect their ambitions, which could include higher education, employment, independent living and participation in society;

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- adaptations to curriculum, teaching and the learning environment and access to ancillary aids and assistive technology;
- securing expertise among teachers, lecturers or other professionals to support children and young people with SEN;
- assessing and evaluating the effectiveness of the provision they make for children and young people with SEN;
- enabling children and young people with SEN to have access to facilities and extra-curricular activity available to all children in the setting;
- supporting and improving emotional and social development, including extra pastoral support arrangements for listening to the views of children and young people with SEN and measures to prevent bullying.

The above should include arrangements for supporting children who are looked after by the local authority and have SEN.

Schools should ensure that the information is easily accessible by parents and is set out in clear, straightforward language. This should include information on the school's SEN policy, named contacts within the school where parents have concerns and details of the school's contribution to the local offer.

In setting out details of the broad and balanced curriculum provided in each year, schools should include details of how the curriculum is adapted or made accessible for pupils with SEN.

Schools should also make data on the levels and type of need within the school available to the local authority. This data will be required to inform local strategic planning of SEN support, and to enable the local authority to identify pupils who have or may have SEN. Such data, collected through the school census, is also required to produce the national SEN Information report.

### **The role of the SENCO in schools**

Governing bodies of maintained mainstream schools and the proprietors of academy schools (including free schools) **must** ensure that there is a qualified teacher designated as Special Educational Needs (SEN) co-ordinator (SENCO) for the school.

The SENCO **must** be a qualified teacher working at the school. A newly appointed SENCO **must** be a qualified teacher and where they have not previously been the SENCO at that or any other relevant school for a total period of more than twelve

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months, they must achieve the National Award in Special Educational Needs Coordination within 3 years of appointment.

The SENCO has an important role to play with the head teacher and governing body, in determining the strategic development of SEN policy and provision in the school. They will be most effective in that role if they are part of the school leadership team.

The SENCO has day-to-day responsibility for the operation of SEN policy and coordination of specific provision made to support individual children with SEN, including those who have EHC plans.

The SENCO provides professional guidance to colleagues and will work closely with staff, parents and carers, and other agencies. The SENCO should be aware of the provision in the Local Offer and be able to work with professionals providing a support role to the family to ensure that children with SEN receive appropriate support and high quality teaching.

The key responsibilities of the SENCO may include:

- overseeing the day-to-day operation of the school's SEN policy;
- coordinating provision for children with SEN;
- liaising with the relevant designated teacher where a looked after pupil has SEN;
- advising a on graduated approach to providing SEN Support;
- advising on the deployment of the school's delegated budget and other resources to meet pupils' needs effectively;
- liaising with parents of children with SEN;
- liaising with early years providers, other schools, educational psychologists, health and social care professionals, and independent or voluntary bodies;
- being a key point of contact with external agencies, especially the LA and LA support services;
- liaising with potential next providers of education to ensure a young person and their parents are informed about options and a smooth transition is planned;

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- working with the head teacher and school governors that the school meets its responsibilities under the Equality Act (2010) with regard to reasonable adjustments and access arrangements;
- ensuring that the school or maintained nursery keeps the records of all children with SEN up to date.

The school should ensure that the SENCO has sufficient time and resources to carry out these functions. This should include providing the SENCO with sufficient administrative support and time away from teaching to enable them to fulfil their responsibilities in a similar way to other important strategic roles within a school.

### **Improving practice and staff training**

Schools are responsible for deciding what external support to seek and for setting their own priorities for the continuous professional development of their staff. The support described in this guidance can be delivered most effectively where there are structured approaches to engaging parents and children, tracking and measuring progress of pupils with SEN and where there is a good level of knowledge across all staff of different types of SEN and suitable teaching approaches and interventions. The SENCO can play an important role in advising and contributing to the broader support engaged by schools and the professional development of other teachers and staff.

A range of organisations offer support and training to schools on overall identification and teaching approaches for pupils with SEN as well as on specific conditions

Many aspects of the approach set out in this chapter draw on learning from the piloting and subsequent work of Achievement for All. This demonstrates that when a whole school approach to supporting pupils with SEN is taken, along with effective engagement with parents there can be a clear impact on attainment.

Schools, colleges and early years providers who need to improve the knowledge and skills of staff in relation to specific conditions can access information, advice and training materials that have been developed through the Department for Education's voluntary and community sector grants programme. NASEN provides an SEN Gateway that provides access to a broad range of materials and support services across the range of SEN.

The following organisations provide advice, information and training on specific impairments. They are:



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- The Autism Education Trust for children and young people on the Autism Spectrum [website](#).
- The Communications Trust for speech, language and communication difficulties [website](#).
- The Dyslexia SpLD Trust on dyslexia and literacy difficulties [website](#).
- The National Sensory Impairment Partnership for visual impairment, hearing impairment and multi-sensory impairment [website](#).
- Early Support provides a range of information materials to families and professionals and can be found on the [National Children's Bureau website](#).
- NASEN have developed an 'SEN Gateway' to help teachers and SENCOs access a range of information, training and resources to support SEN and all of this is available from the [NASEN website](#).

Each of these organisations is working with funding from the Department for Education to support the reforms to the SEN system.

### **Preparing for adulthood (transition)**

Schools should help pupils to start planning for their future adult life as early as possible, and by Year 9 at the latest. This goes beyond thinking simply about the transition to post-16 education and training. Schools should focus on raising aspirations and supporting pupils to go on to achieve the best possible outcomes in employment, independent living and participating in society. This could include, for example:

- including preparation for adulthood in the planning meetings with pupils and parents at an early stage (and particularly from Year 9)
- Ensuring that career advice and information provides high aspirations and a wide range of options for pupils with SEN; and
- Helping pupils and parents understand and explore how the support they receive in school will change as they move into different settings, and what support they are likely to need to achieve their ambitions.

Schools have specific duties to prepare young people with EHC Plans for the transition to adulthood, as set out in Chapter 7 of this Code. The review of an EHC Plan in Year 9 should build on previous reviews and existing plans. It must allow time for the commissioning of any necessary provision and support to take place. It

should build on action that has already been agreed with the child and should inform decisions about the next stage of education - specifically choices about what GCSEs or other relevant qualifications the child will be studying, the range of post-16 options which may be available and the longer term outcomes that the child wants to achieve in their adult life.

## **The role of impartial information, advice and guidance and transparent decision making for children and young people**

Schools have a duty to secure independent, impartial careers guidance for pupils in 8-13. Guidance from schools or colleges **must** include information on the full range of 16-18 education or training options, including further education and Apprenticeships. Colleges also have requirement extended to 16-18 year olds in colleges through funding agreements

The Department for Education has issued statutory guidance which includes a clear requirement for schools to secure access to independent face-to-face support where this is the most suitable support for young people to make successful transitions - particularly children from disadvantaged backgrounds, or those who have SEN or are disabled. A practical guide includes further information and models of good practice to help schools meet their requirements under the duty.

### **Information Sharing**

It is important that information about the previous provision made for the child or young person, including education and training, is shared with the further education provider before the child or young person begins a new programme of study.

## **6.6 Further education**

The further education sector offers provision for both young people and adults, studying full and part-time, across a wide range of academic and vocational courses. This section applies to those institutions within the further education sector that must have regard to this Code (as set out in section 1.3) namely Further Education (FE) Colleges and Sixth Form Colleges. It concerns provision for young people with SEN (which FE colleges might describe as learners with learning difficulties or disabilities), up to age 25. Students in that group will be studying across all levels, from pre-Entry level to Level 3. Colleges should be ambitious for young people with SEN and **must** use their best endeavours so that young people with SEN have access to a wide range of study programmes and support at all levels to enable them to achieve good life outcomes.

## Identifying SEN

Colleges should make sure that students are on an appropriate course. Where available, they should draw on previous assessments and other information from the student's former school or other education setting about their SEN, as well as discussing with the young person and his or her family, what needs the student has. Colleges may also want to undertake their own assessments, whether or not there is any information from the school, to assess suitability for different study programmes. There will be cases where a student's SEN is identified for the first time in college. Colleges should use any assessment or other information they have to inform the support they will offer the student so they can access a wide range of stretching study programmes.

Curriculum staff should work with specialist support to identify where a student may be struggling with the demands of a course due to their SEN. Students who fell behind at school, or who are studying below Level 2, may have SEN, but should not be automatically identified as such just because they have lower attainment levels than their peers. Where a student has a specific learning difficulty, this should be recognised and appropriate support should be put in place. Colleges should involve the young person and, where they judge it appropriate, their family, in discussing what additional support is required.

## SEN support

Colleges should have high aspirations for all their students with SEN, who may range from those able to progress to higher education to those unable to gain qualifications. They should plan for, and provide, support to meet the young person's needs, and involve the student, and their family where appropriate, in this planning. All students with SEN, with and without EHC plans, should be able to make a successful transition into adult life with the right support and preparation, including employment, independent living and participation in society. SEN provision for them should reflect that ambition.

Colleges should have access to specialist skills to support the learning of SEN students when required, either through partnerships, or by employing practitioners to help students with SEN to progress. They should also ensure that curriculum staff are able to develop their skills, keep their knowledge up to date, and are aware of effective practice. There is no legal duty on colleges to have a SENCO, but colleges should ensure there is a named person in the college with oversight of SEN provision to ensure co-ordination of support. Curriculum and support staff in a college should know who to go to if they need support in identifying a student's SEN, are concerned about their progress or need further advice.

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All students, including those with SEN, should follow a coherent study programme at an appropriate level that supports progression and enables them to prepare for adult life. In most cases, study programmes should lead to substantive qualifications but in some cases, depending on students' individual needs they should concentrate on work experience or other non-qualification activities. Specifically, colleges should consider how they might offer study programmes such as Supported Internships and Traineeships that will support young people with SEN into paid employment. At all levels, from pre-Entry level to Level 3, students should be supported to achieve a successful transition to adult life. For those students without GCSEs (A\* to C) in English and maths study programmes should include these subjects at an appropriate level, which may mean, for example, functional literacy and numeracy. Colleges must enable all students to access this learning.

Colleges should work in partnership with a variety of agencies to ensure that study programmes enable young people with SEN to prepare well for adult life so they can achieve the best possible outcomes such as higher education, employment, independent living and participating in society. This involves raising the aspirations of young people themselves, their families and staff, understanding and sharing what works well, and developing tailored study programmes around the individual. It is likely to involve partnership with others such as other colleges or schools, the voluntary sector, the local authority and employers. Colleges should provide additional SEN support to students in a way that promotes their autonomy and encourages their successful progression into adult life.

Preparing for employment could involve, for example, working with local employment agencies, employers, and job coaches to develop high quality work experience and pathways to employment, including Supported Internships for those with EHC Plans. Colleges should also, where needed, help students to develop work related skills such as presentation and social skills, travelling independently, or in using assistive and other technology. Colleges should also consider how they can support students who may wish to set up their own business in adult life. Colleges are also under a duty to secure independent, impartial careers advice for students aged 16-18.

In preparing students for independent living colleges may want to consider how to equip students to have as much choice and control as possible over what kind of support they receive and understand what support might be available to them, including financial support, when they make the transition into adult life. They may also consider how to help students decide what type of accommodation would meet their needs in adult life and how to find that accommodation.

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Colleges should help prepare students for participation in society through, for example, encouraging them to participate in college life and giving SEN students a voice in college policy making, and ensuring they can take part in any networks of support for students and volunteering opportunities in the local community.

Guidance on study programmes was published in 2012 in the Government response to *The Wolf Report* and is available at the [Department for Education's website](#).

*Overview of the 16 to 19 funding formula*, published June 2013, describes the overall system and funding mechanism for 16-19 education and training from 2013 onwards, that applies to schools, academies, further and sixth-form colleges and charitable and commercial providers. It will be of interest to anyone requiring an overview of the system and includes links and references to further detailed guidance and information. It is available at the [Department for Education's website](#).

### **Record Keeping**

Further education providers will monitor the progress and development of their students. Details of SEN, the outcomes for young people, teaching interventions and the involvement of specialists should be recorded as part of this monitoring. As with schools, colleges will determine their own approach to record keeping. Providers should record details of additional or different provision to meet a young person's SEN and their progress towards achieving specified outcomes. This information should be used as part of the regular discussion with the young person, and in many cases their parents, about the young person's progress, the expected outcomes from the support provided, and the planned next steps. Colleges should ensure that they have accurate information to evidence the SEN support that has been provided over the student's time in college, and its impact.

## **6.7 Funding for SEN Support**

All mainstream schools and colleges are provided with resources that they can use to support those with additional needs, including children and young people with SEN and disabilities. Most of these resources are determined by a local funding formula, discussed with the local schools forum, which is also applied to local academies. School and academy sixth forms, sixth form colleges and further education colleges receive an allocation based on a national funding formula.

Schools have an amount identified within their overall budget, called the notional SEN budget. This is not a ring-fenced amount, and it is for the school to provide, high quality appropriate support from the whole of its budget. Although colleges do not have a notional SEN budget, they also have additional funding for students with

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SEN. As with schools, this funding is not ring-fenced and they are expected to provide appropriate, high quality SEN support using all available resources.

Local authorities must ensure that all providers delivering funded early education places effectively meet the needs of children with special educational needs (SEN) and disabled children. In order to do this local authorities should make sure funding arrangements for early education reflect the need to provide suitable support for them.

It is for schools, colleges and early years providers, as part of their normal budget planning, to determine their approach to using their resources to support the progress of children and young people with SEN. The SENCO, Head Teacher and governing body or proprietor, or the equivalent in further education colleges, should establish a clear picture of the resources that are available to the school or college. They should consider their strategic approach to meeting SEN in the context of the total resources available, including any resources targeted at particular groups, such as the pupil premium.

This will enable schools and colleges to provide clear descriptions of the types of special educational provision that they normally provide in the local offer. This will help parents and others understand what they can normally expect the school and college to provide for children with SEN.

Schools and colleges, however, are not expected to meet the costs of the more expensive support from their core funding. They are expected to provide additional support which costs up to a nationally prescribed threshold per pupil/student per year. However, where the cost of special educational provision required to meet the needs of an individual child or young person exceeds the nationally prescribed threshold, the responsible local authority, usually the authority where the child or young person lives, may provide additional top-up funding. This should be arranged as part of the placement of the child or young person in the school or college, and should reflect the cost of providing the additional support in the setting that is in excess of the nationally prescribed threshold.

It should be noted that colleges are funded by the EFA and/or local authorities for all 16-18 year olds and for those aged 19-25 who have EHC plans. Colleges **must not** charge tuition fees for these young people. Further information on funding can be found on the [Department for Education's website](#).

## 6.8 Admissions and inclusion

With the right staff training, strategies and support in place the majority of children and young people with SEN are already successfully included in mainstream

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education. This is reflected in the general principle in law that children and young people with SEN should be educated in mainstream settings. That principle is supported by provisions safeguarding the interests of all children and young people and ensuring that the preferences of the child's parents or the young person for where they should be educated are met wherever possible.

Special schools (in the maintained, academy, non-maintained and independent sectors), special post-16 institutions and specialist colleges all have an important role in providing for children and young people with SEN and in developing and working collaboratively with mainstream and special settings to develop and share expertise and approaches.

Children and young people with SEN have different needs and can be educated effectively in a range of settings, including mainstream settings and special schools and colleges. Alongside the general principle of inclusion parents of children with an EHC plan and young people with such a plan have the right to seek a place at a special school, special post-16 institution or specialist college. Parents and young people should have a choice of education settings. Further details on the arrangements for Education, Health and Care Plans are set out in Chapter 7.

Where a child or young person has SEN but does not have an EHC plan they **must** be educated in a mainstream setting except in specific circumstances (see below). The School Admissions Code of Practice requires children and young people with SEN to be treated as fairly as others. Admissions authorities:

- must consider applications from parents of children who have SEN who do not have an EHC plan on the basis of the school's published admissions criteria as part of normal admissions procedures;
- must not refuse to admit a child who has SEN but does not have an EHC plan because they do not feel able to cater for those needs;
- cannot refuse to admit a child on the grounds that they do not have an Education, Health and Care Plan.

The Equality Act 2010 prohibits schools from discriminating against disabled children in respect of admissions for a reason related to their disability. FE colleges manage their own admissions policies and are also prohibited from discriminating against disabled young people in respect of admissions. Students will need to meet the entry requirements for courses as set out by the college, but should not be refused access to opportunities based on whether or not they have SEN.

Children and young people without an EHC plan can be placed in special schools and special post-16 institutions in the following specific circumstances:

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- where they are admitted to a special school or special post-16 institution to be assessed for an EHC plan with their agreement (in the case of a young person) or the agreement of their parent (in the case of a child), the local authority, the head teacher or principal of the special school or special post-16 institution and anyone providing advice for the assessment;
- where they are admitted to a special school or special post-16 institution following a change in their circumstances with their agreement (in the case of a young person) or the agreement of their parent (in the case of a child), the local authority and the head teacher or principal of the special school or special post-16 institution;
- where they are in hospital and admitted to a special school which is established in a hospital; or
- where they are admitted to a Special academy (including a Special free school) whose academy arrangements allow it to admit children or young people with SEN who do not have an EHC plan.

The last of these provisions enables the Secretary of State to approve academy arrangements for individual Special academies or Special free schools that are innovative and increase access to specialist provision for children and young people without EHC plans.

Academies will make clear through their Funding Agreement that a child or young person with SEN but no EHC plan should only be placed there at the request of their parents or at their own request and with the support of professional advice such as a report from an Educational Psychologist. A special academy or special free school with these arrangements will only be able to admit children who have a type of SEN for which they are designated. They will have adopted fair practices and arrangements that are in accordance with the Schools Admission Code for the admission of children without an EHC plan.

## **6.9 External support in educational settings**

Where assessment indicates that support from specialist services is required it is important that children and young people receive it as quickly as possible. Joint commissioning arrangements should seek to ensure that there are sufficient services to meet the likely need in an area. The local offer should set out clearly what support is available from different services and how it may be accessed. Some of the key services for children who do not have an EHC plan are set out below. The list is not exhaustive.



## The educational psychologist

Educational psychologists are specialists in learning, behaviour and child development. They work directly with children and young people as well as providing expert advice to their parents and carers, and to other adults who teach and support them.

Within schools and other educational settings, the educational psychology service provides a wide range of services, including advice on teaching and learning, counselling, staff training, behaviour management and practical evidence-based interventions. They provide on-going advice about children and young people with EHC plans. They also make links with wider community services and psychological therapies (mental health) especially in relation to child protection, Child and Adolescent Mental Health Services, and managing challenging circumstances and crises such as suicide, death, bullying and harassment.

Many educational psychologists are members of local integrated and multi-agency teams, and have links to child protection, looked after children and fostering and adoption services.

Most educational psychologists are employed by local authorities but some work directly in schools, are self-employed or work as consultants for social services departments, voluntary bodies, or parents. In their local offer, local authorities should make it clear how parents, schools and colleges can access educational psychology services.

## Child and adolescent mental health services (CAMHS)

CAMHS are mainly local services that provide mental health assessment and treatment services to children, young people and their families. They also provide advice, consultation and support to other individuals and agencies involved in children's care. A range of professionals may work in CAMHS including therapists, nurses, psychiatrists, psychotherapists, psychologists and social workers.

CAMHS deliver services based on a four-tier framework, as follows:

**Tier 1:** consists of non-specialist primary care workers such as school nurses and health visitors working with, for instance, common problems of childhood such as sleeping difficulties or feeding problems.

**Tier 2:** consists of specialised Primary Mental Health Workers offering support to other professionals around child development; assessment and treatment in problems in primary care, such as family work, bereavement, parenting groups etc. This also includes Substance Misuse & Counselling Services.

**Tier 3:** consist of specialist multi-disciplinary teams such as Child & Adolescent Mental Health Teams based in a local clinic. Problems dealt with here would be problems too complicated to be dealt with at tier 2 e.g. assessment of development problems, autism, hyperactivity, depression, early onset psychosis.

**Tier 4:** consists of specialised day and inpatient units, where patients with more severe mental health problems can be assessed and treated.

A referral to a specialist CAMHS clinic (Tier 3) is most commonly made through a GP. However other professionals working with children and young people may also be able to make referrals, depending on how CAMHS is organised in their region. Referrals are not usually accepted directly from young people or their families.

Each CAMHS will have a process where new referrals are reviewed and assessed. Some CAMHS will offer an assessment appointment, others apply urgency criteria are applied to cases, in order to help ensure a more uniform and consistent evaluation of risk/needs. Accepted cases are prioritised according to level of clinical concern and placed on a waiting list. If cases are not accepted as requiring CAMHS support then they may signpost more appropriate support services. Urgent cases where there is concern that a child or young person may cause serious harm to themselves or others are subject to an emergency response process.

Schools, colleges, early years and other providers should ensure they are aware of the referral criteria in their area. CAMHS should provide support for young people up to the age of 18, though some areas have 'transition' services which can go from early teens to around 25 years old. Young people who fall outside of these guidelines will need to be referred to adult mental health services, which have their own (different) referral criteria and thresholds.

### **Specialist support teachers or support services**

There is a range of specialist teachers who provide advice, direct support and guidance consultation to children and young people with a range of SEN. In particular, specialist teachers for children with hearing and visual impairment, including deafblindness, and those with physical impairment, support schools in modifying their curriculum and environment to ensure needs can be met. Professionals teaching classes of children with sensory impairments are required to have a mandatory qualification approved by the secretary of state. Specialist teachers working in advisory roles to a range of schools or other education settings should also have such a qualification. SEN support services are typically commissioned by local authorities and delivered in a range of ways, including through schools.

## **Behaviour support teams**

Behaviour support teams work to support children and young people with emotional and social difficulties in school. They provide early intervention and preventative work at whole school, group and individual level, and support schools in meeting the needs of those with more complex needs.

## **Other roles which support children and young people with SEN**

### **Speech and language therapists**

Speech and language therapists (SALTs) work closely with children and young people who have a range of speech, language and communication difficulties. They usually work as part of a multidisciplinary team, including with professionals in education and social services. Increasingly, SALTs provide direct advice and guidance on appropriate interventions that teachers, teaching assistants and parents implement and they monitor.

### **Occupational therapists**

Occupational therapists help children and young people achieve or maintain their maximum level of independence and develop the practical life skills needed to participate to their full potential at home and in education.

### **Physiotherapists**

Physiotherapists are concerned with a child or young person's balance, movement and co-ordination. In schools, the physiotherapist will advise the teacher and classroom assistant on activities which will be helpful, such as exercise routines and games which could be done during P.E. lessons.

### **Job coaches**

The job coach role is central to facilitating a successful transition from education to employment for young people with more complex special needs. Job coaches can provide on-the-job training for young people on Supported Internships, Traineeships or Apprenticeships. Job coaches also provide support to employers, increasing their confidence in working with these young people and helping them to understand the business case for employing a diverse workforce.

## 7 Assessments and Education, Health and Care plans

*[Draft regulations for consultation relevant to this chapter are:*

- Remaining in special school or post-16 institution without an EHC plan Regulations, Clause 34;
- Education (Special Educational Needs) (Assessment and plan), Clauses 36, 37, 44 and 45;
- The Approval of Independent Educational Institutions and Special Post-16 Institutions Regulations, Clause 41;
- The Special Educational Needs (Personal Budgets and Direct Payments) Regulations, Clause 49;
- Policy statement on regulations (Transitional arrangements), Clause 107.

### 7.1 Introduction

The majority of children and young people with SEN will have their needs met within local mainstream early years providers, schools or colleges (as set out in the information on identification and support in Chapter 6).

A local authority **must** conduct an assessment of education, health and care needs and prepare an Education, Health and Care (EHC) plan when it considers that it may be necessary for special educational provision to be made for the child or young person through an EHC plan. This is likely to be where the special educational provision required to meet the child or young person's needs cannot reasonably be provided from within the resources normally available to mainstream early years providers, schools and post 16 institutions. This statutory assessment should not be the first step in the process; rather it should follow on from planning already undertaken with parents and young people in conjunction with an early years provider, school, post-16 institution or other provider.

EHC plans **must** be focused on the outcomes the child or young person seeks to achieve across education, health and care. EHC plans **must** set out how services will work together to meet the child or young person's needs and in support of those outcomes. EHC plans will be based on a co-ordinated assessment and planning process which puts the child and young person and their parents at the centre of decision making.

Statutory assessment will not always lead to an EHC plan. The information gathered during an assessment may indicate ways in which the school, college or other provider can meet the child or young person's needs from within available resources.

## 7.2 Requesting an assessment

The following people have a specific right to request that a local authority conduct an education, health and care needs assessment for a child or young person aged between 0 and 25:

- a. The child's parent (or an advocate on their behalf).
- b. The young person over the age of 16 (or an advocate on their behalf).
- c. A person acting on behalf of a school or post-16 institution (this should be with the knowledge and agreement of the parent or young person where possible).

In addition, anyone can bring a child or young person who has (or may have) SEN to the attention of the local authority. This could include, for example foster carers, health and social care professionals, early years practitioners, youth offending teams or probation services, those responsible for education in custody, school or college staff or a family friend. Again, this should be done with the knowledge and agreement of parents or the young person where possible.

## 7.3 Considering whether an assessment is necessary

Following a request for assessment or the child or young person having otherwise been brought to its attention, the local authority **must** determine whether a statutory education, health and care assessment is necessary, make a decision, and communicate its decision to the child's parent or young person.

Where the local authority considers that special educational provision may need to be made and is considering whether a statutory assessment is necessary, it **must** notify:

- a. The child's parents or the young person
- b. The health service (relevant Clinical Commissioning Group or NHS England)
- c. Local authority officers responsible for social care for children or young people with SEN
- d. Where the child attends an early years provider, their Head of SEN

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- e. Where the child or young person attends a school, their headteacher (or equivalent)
- f. Where the young person attends a post-16 institution, their principal (or equivalent)

In considering whether a statutory assessment is necessary, local authorities should pay particular attention to:

- a. The views, wishes and feelings of the child and his or her parents, or the young person. These can be expressed through an advocate if that is helpful. The local authority **must** consult the child's parent or young person as soon as practicable following a request for assessment (or having otherwise become responsible).
- b. Evidence of the child or young person's academic attainment and rate of progress.
- c. Information about the nature, extent and cause of the child or young person's SEN.
- d. Evidence of the action already being taken by the early years provider, school or post-16 institution to meet the SEN.
- e. Evidence that where progress has been made, it has only been as the result of much additional effort and instruction at a sustained level over and above that which is usually provided.
- f. Evidence of the child or young person's physical, emotional and social development and health needs.
- g. Where a young person is aged over 18, their age and whether remaining in education or training would help them to progress, building on what they have learned before and helping them to make a successful transition to adult life.

The local authority **must** decide whether or not to proceed with an assessment, and **must** inform the child's parent or young person of their decision within a maximum of six weeks of receiving a request for an assessment (or having otherwise become responsible). The local authority **must** give its reasons for this decision. The local authority **must** also notify the other parties listed in section 7.3 above.

If the local authority intends to conduct an assessment, it **must** ensure the child's parent or the young person is fully included from the start and made aware of their opportunities to offer views and information.

If the local authority decides not to conduct an assessment it **must** inform the parents or young person of their right to appeal that decision, of the requirement for them to consider mediation should they wish to appeal, and the availability of Parent Partnership and other independent advisory or disagreement resolution services.

## 7.4 Co-ordinated assessment and planning

Children, young people and families should experience well-co-ordinated assessment and planning leading to timely, well-informed decisions. The following general principles underpin effective assessment and planning processes:

### a) Participation in decision-making:

- Children, young people and their parents are key partners in the process, and their views on how, when and to what extent they would like to engage **must** be taken into account. They should feel confident that they will be listened to and their opinions will be valued.
- Practitioners in all services involved in the assessment and planning process need to be skilled in working with children, parents and young people to help them make informed decisions. All practitioners should have access to training so they can do this effectively.

### b) Support for children/young people and parents:

- Local authorities, health agencies and other agencies **must** work with parents and young people to understand how best to minimise disruption to the child, young person and their family. For example, multiple appointments should be co-ordinated or combined where possible and appropriate, and some children and young people may need special arrangements for appointments.
- Local authorities **must** provide all parents, children and young people with impartial information, advice and support in relation to SEN, including the statutory assessment process, EHC plans (see 3.3 for more information) and personal budgets. This should include key working and, as appropriate, an Independent Supporter.
- Local authorities should have early discussions with parents or the young person about what the assessment and planning processes will involve, and the range of options that will be available, such as different types of educational institutions and their right to request personal budgets. The local authority **must** provide information, advice and support in understanding what a personal budget entails and how it can be used.

**c) Co-ordination:**

- Local authorities are responsible for ensuring that there is effective co-ordination of the assessment and planning process. This is a separate function from the provision of impartial information, advice and support (see Chapter 3). The co-ordination should include:
  - Co-ordination and mediation of professional input;
  - Planning the process to meet the needs of children, parents and young people;
  - Arranging meetings; and
  - Keeping the parent or young person informed.
- The assessment and planning process should actively be supported by senior leadership teams monitoring the quality and sufficiency of assessments through robust quality assurance systems. Families should have confidence that those overseeing the assessment process will be impartial and act in their best interests.

**d) Sharing information:**

- Information sharing is vital to support an effective assessment and planning process which fully identifies needs and outcomes and the education, health and care provision needed by the child or young person. Information can be shared if there are agreed local processes designed to meet specific legal requirements about confidentiality, consent and security of information.<sup>7</sup> Agencies should work together to agree local protocols for information collection and management so as to inform planning of provision for children and young people with SEN at both individual and strategic levels.
- As far as possible, there should be a ‘tell us once’ approach to sharing information during the assessment and planning process so that families and young people do not have to repeat the same information to different agencies, or different practitioners/services within each agency.
- Local authorities **must** discuss with the child’s parent or the young person what information they are happy for the local authority to share with other agencies (see section 7.21 for further information on confidentiality).

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<sup>7</sup> The DfE [website](#) on information sharing.



**e) Timely provision of services:**

- Where particular services are assessed as being needed, such as those resulting from statutory social care assessments under the Children Act 1989 or adult social care legislation, their provision should be delivered in line with the relevant statutory guidance and should not be delayed until the EHC plan is complete.

**f) Cross-agency working:**

- Joint working between local authorities and CCGs in the development of an EHC plan supports the provision of effective services for children and young people with SEN. (See Chapter 4 for guidance on services working together, and the section later in this chapter on agreeing the health provision in EHC plans.)
- Consideration should be given to:
  - The range of professionals across education, health and care who need to be involved and their availability;
  - Flexibility for professionals to engage in a range of ways;
  - Allowing professionals to feedback on the process, and its implementation, to support continual improvement.

**g) Looked after children:**

- Local authorities should be particularly aware of the need to avoid any delays for looked after children and work to carry out the assessment in the shortest possible timescale. Addressing a looked after child's SEN will be a crucial part of avoiding breakdown in their care placement.

## 7.5 Timescales

The EHC planning and assessment process **must** be carried out in a timely manner. The time limits set out here are the maximum time allowed; steps **must** be completed as soon as practicable.

The whole assessment and planning process, from the point an assessment is requested or that a child or young person is brought to the LA's attention until the final EHC plan is issued, must take no more than 20 weeks (subject to exemptions set out below).

### Specific requirements:

- Local authorities **must** respond to any request for a statutory EHC assessment within a maximum of 6 weeks.
- When local authorities request information as part of the assessment process, those supplying the information **must** respond within a maximum of 6 weeks from the request for assessment.
- If a local authority decides, following an assessment, not to issue an EHC plan, it **must** inform the parents or young person within a maximum of 16 weeks from the request for assessment.
- The parents or young person **must** be given at least 15 days to consider and provide views on a draft EHC plan and ask for a particular school or other institution to be named in it.

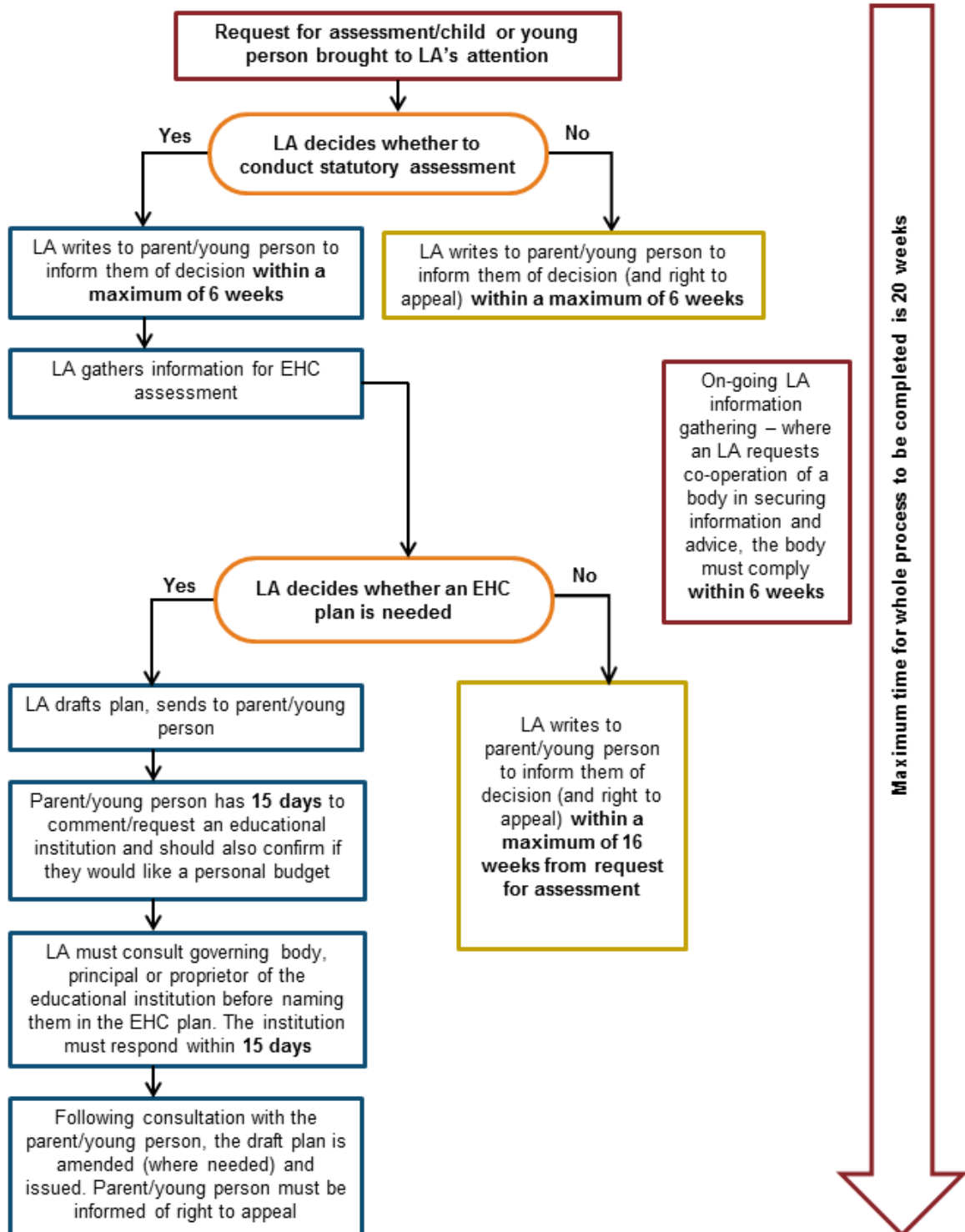
Where there are exceptional circumstances it may not be reasonable to expect local authorities and others partners to comply with the time limits above. Regulations set out specific exemptions. These include where:

- Appointments with people from whom the local authority has requested information are missed by the child or young person.
- The child or young person is absent from the area for a period of at least 4 weeks.
- Exceptional personal circumstances affect the child or young person, or his or her parent.
- The educational institution is closed for at least 4 weeks, which may delay the submission of information from the school or other institution.

The parents or young person should be informed if exemptions apply so that they are aware of, and understand, the reason for any delays. Local authorities should aim to keep delays to a minimum and as soon as the conditions that led to an exemption no longer apply the local authority should endeavour to complete the process as quickly as possible. All remaining elements of the process **must** be completed within their prescribed periods, regardless of whether exemptions have delayed earlier elements.

## 7.6 The education, health and care assessment and planning process

Figure 2: The education, health and care assessment planning process



## 7.7 Advice and information for education, health and care assessments

When making an education, health and care assessment local authorities **must** consult the child and his or her parent, or the young person, and take into account their views, wishes and feelings and any information provided by them or at their request. Local authorities should seek views and information from the child using appropriate methods, which might include observation for a very young child, or the use of different methods of communication such as Picture Exchange Communications System.

Local authorities **must** also gather advice from relevant professionals. The local authority should consider with the parent, young person and the parties listed below the range of advice needed in order to enable a full assessment to take place and to identify desired outcomes and provision that may be required to help meet those outcomes. The local authority **must** not seek further advice if such advice has already been provided (for any purpose) and the person providing the advice, the local authority and the child's parent or the young person are all satisfied that it is sufficient for the assessment process.

Decisions about the level of engagement and advice needed from different parties will be informed by knowledge of the child or young person held by the early years provider, school or post-16 institution they attend. For example, if the educational provider believes there are signs of safeguarding or welfare issues, a social care assessment may be necessary.

Advice and information **must** be sought as follows:

- a. Advice and information from the child's parent or the young person. The local authority **must** take into account his or her views, wishes and feelings.
- b. Educational advice and information from the head teacher or principal of the early years provider, school or post-16 or other institution attended by the child or young person. Where this is not available (for example because the child or young person does not attend an educational institution), the authority should seek advice from a person with experience of teaching children or young people with SEN.
- c. If the child or young person is either visually or hearing impaired, or both, the educational advice and information **must** be given after consultation with a person who is qualified to teach pupils or students with these impairments.

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- d. Medical advice and information from health care professionals with a role in relation to the child's or young person's health (see the section later in this chapter on agreeing the health provision in EHC plans).
- e. Psychological advice and information from an educational psychologist. The educational psychologist should consult any other psychologists known to be involved with the child or young person.
- f. Social care advice and information from or on behalf of the local authority, including, if appropriate, early help and children in need assessments, and safeguarding assessments for children, or adult social care assessments for young people.
- g. Any other advice and information which the local authority considers appropriate for a satisfactory assessment, for example:
  - Any assessment undertaken by an early years provider.
  - In the case of service children, from the Children's Education Advisory Service.
  - In the case of a looked after child, from the Virtual School Head in the authority that looks after the child and the child's designated teacher and the designated doctor or nurse for looked after children.
  - From a youth offending team.
  - Other information suggested by the young person or parent; for example, they may suggest consulting a 'navigator' or a GP or other health professional.

These written submissions should be clear, accessible and specific. They should provide advice about outcomes relevant for the child or young person's age and phase of education, and strategies for their achievement. The local authority may provide guidance about the structure and format of advice and information to be provided. Professionals should limit their advice to areas in which they have expertise. Advice and information requested by the local authority **must** be provided within six weeks.

It is helpful for local authorities to set up moderating groups to support transparency in decision-making. Such groups can ensure consistent decisions are made about whether to issue EHC plans. Through sampling and retrospective comparison, moderating groups can also help local authority practice to become more robust and

clearly understood by schools, early education settings, post-16 institutions, young people and parents.

## 7.8 Decision not to issue an EHC plan

Following assessment, if the local authority decides that a statutory EHC plan is not necessary, it **must** notify the parents or young person, the early years provider, school or post-16 institution currently attended, and the health service and give the reasons for its decision. This notification **must** take place within 16 weeks of the initial request or of the child or young person having otherwise been brought to the local authority's attention. The local authority **must** also tell the parents or young person of their right to appeal to the SEN Tribunal against the decision and set out the time limits for appeal, and the availability of parent partnership and disagreement resolution services (see Chapter 9). The local authority should ensure that the parents or young person are aware of the resources available to meet SEN within mainstream provision and other support set out in the local offer.

The local authority should on request provide feedback collected during the assessment process, such as evidence from professionals, which the parents, young person, early years provider, school or post-16 institution may find useful. This information can then inform how the outcomes for the child or young person can be achieved through special educational provision already made by the early years provider, school or post 16 institution and co-ordinated support from other agencies.

## 7.9 Writing the EHC plan

Local authorities should have regard to the following principles and requirements when preparing an EHC plan:

- a. Decisions about the content of EHC plans should be made openly and collaboratively with parents, children and young people. It should be clear how the child or young person has contributed to the plan and how their views are reflected in it.
- b. EHC plans should describe positively what the child or young person can do and has achieved.
- c. EHC plans should be clear, concise, understandable and accessible to parents, children, young people and providers/practitioners. They should be written so they can be understood by professionals in any local authority.
- d. EHC plans **must** be evidence-based and focus on how best to achieve outcomes (both short term outcomes and longer term aspirations for children

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and young people) sought. They **must** refer to the professional evidence received as part of the assessment.

- e. Outcomes in EHC plans should be SMART (specific, measurable, achievable, realistic, time-bound). It needs to be clear how specified provision and support will help the child or young person to achieve the outcomes. There should also be clarity about how to judge that an outcome has been achieved.
- f. Where a young person or parent is seeking an unusual or alternative way to receive their support services – particularly through a personal budget, but not exclusively so – then the planning process **must** include consideration of those solutions.
- g. EHC plans should show how education, health and care provision will be integrated wherever possible to support the child or young person achieve their outcomes.
- h. EHC plans should be forward looking – e.g. anticipating, planning and commissioning for important transition points in a child or young person’s life, including planning and preparing for their transition to adult life (including employment, independent living and community participation as far as practicable).
- i. EHC plans should describe how informal (family and community) support as well as formal support from statutory agencies can help in achieving agreed outcomes.

### Content of EHC plans

The format of an EHC plan will be agreed locally. However, all EHC plans **must** include, in separately sections:

- a. The views, interests and aspirations of the child and their parents or young person.
- b. The child or young person’s SEN.
- c. The outcomes sought for the child or the young person, including outcomes for adult life where appropriate.
- d. The special educational provision required by the child or the young person.
- e. Any health or social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having SEN (see table below for details).

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- f. The name and type of the school, maintained nursery school, post-16 institution or other institution or the type of school or other institution to be attended by the child or young person where no such institution is named.
- g. Where there is a personal budget, the details of this and the outcomes to which it is intended to contribute.
- h. The advice and information gathered during the assessment (in appendices). There should be a list of this advice and information.

In addition, where the child or young person is in or beyond year 9, the EHC plan **must** include the provision required by the child or young person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society.

**The following table sets out what to include in each section of the EHC plan.**

Section	Information to include
<p><b>The views, interests and aspirations of the child and their parents, or of the young person</b></p>	<ul style="list-style-type: none"> <li>• Details about the child or young person’s aspirations and goals for the future.</li> <li>• Details about play, health, schooling, independence, friendships, further education and future plans including employment (where practical).</li> <li>• A summary of how to communicate with the child or young person and engage them in decision-making.</li> <li>• The child or young person’s history.</li> <li>• If written in first person, the plan should make clear whether the child or young person is being quoted directly, or if the views of the parents or professionals are being represented.</li> </ul>
<p><b>The child or young person’s SEN</b></p>	<ul style="list-style-type: none"> <li>• All of the child or young person’s identified SEN <b>must</b> be included.</li> <li>• Any health and care needs identified through the EHC assessment should also be included, so it is clear how any health and care provision in the plan addresses identified needs.</li> </ul>



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Section	Information to include
<p><b>The outcomes sought for the child or the young person</b></p>	<ul style="list-style-type: none"> <li>• A range of outcomes over varying timescales, covering education, health and care as appropriate.</li> <li>• A clear distinction between outcomes and provision. The provision should help the child or young person achieve an outcome; it is not an outcome in itself.</li> <li>• Steps towards meeting the outcomes.</li> <li>• The arrangements for monitoring progress, including review and transition review arrangements.</li> <li>• Forward plans for key changes in a child or young person's life, such as changing schools or moving on from further education to adulthood.</li> <li>• For children and young people preparing for the transition to adulthood, the outcomes sought in adult life.</li> </ul>
<p><b>The special educational provision required by the child or the young person</b></p>	<ul style="list-style-type: none"> <li>• Provision should be detailed and specific and should normally be quantified, for example, in terms of the type of support and who will provide it.</li> <li>• It <b>must</b> be clear how the provision will support the outcomes, including any provision secured through a personal budget.</li> <li>• In some cases, flexibility will be required to meet the changing needs of the child or young person.</li> <li>• Where provision is to be delivered through a direct payment the plan should set the needs and outcomes to be met by the direct payment and how this will be achieved.</li> <li>• There should be clarity as to how advice and information gathered has informed the provision specified.</li> <li>• The plan should specify: <ul style="list-style-type: none"> <li>• Any appropriate facilities and equipment, staffing arrangements and curriculum.</li> <li>• Any appropriate modifications to the application of the National Curriculum.</li> <li>• Any appropriate exclusions from the application of the National Curriculum, in detail, and the provision which it is proposed to substitute for any such exclusions in order to</li> </ul> </li> </ul>

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Section	Information to include
	<p>maintain a balanced and broadly based curriculum.</p> <ul style="list-style-type: none"> <li>• Where residential accommodation is appropriate, that fact.</li> <li>• The arrangements for setting shorter term targets and monitoring progress.</li> <li>• Where there is a personal budget, the details of this and the outcomes to which it is intended to contribute.</li> </ul>
<p><b>Any health or social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having SEN</b></p>	<ul style="list-style-type: none"> <li>• Provision should be detailed and specific and should normally be quantified, for example, in terms of the type of support and who will provide it.</li> <li>• It <b>must</b> be clear how the provision will support the outcomes, including any provision secured through a personal budget.</li> <li>• Clarity as to how advice and information gathered has informed the provision specified.</li> <li>• Health care provision reasonably required may include specialist support and therapies, such as medical treatments and delivery of medications, occupational therapy, and physiotherapy, a range of nursing support, specialist equipment, wheelchairs and continence supplies. They could include highly specialist services needed by only a small number of children which are commissioned centrally by NHS England (for example augmentative and alternative communication systems, or provision for young offenders in the secure estate).</li> <li>• Social care provision reasonably required may include provision identified through early help and children in need assessments and safeguarding assessments for children, or adult social care assessments for young people. The process for managing individual children’s social care assessments is set out in Working Together 2013.<sup>8</sup> Working Together 2013 makes clear that section 17 assessments for children in need, including disabled children, may be</li> </ul>

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<sup>8</sup> The Department for Education has published this guidance and it is available on the DfE [website](#).

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<b>Section</b>	<b>Information to include</b>
	<p>combined with other assessments including assessments in relation to SEN. See section 8.4 for more information.</p> <ul style="list-style-type: none"> <li>• As EHC plans can be maintained to the age of 25 there will be occasions, when the young person is over 18, that the care provision specified in an EHC plan will be provided by adult services [including the proposals set out in the Care Bill, subject to Parliamentary approval. The Care Bill provides for a single national eligibility criteria and requires that the local authority must meet eligible needs.</li> </ul>
<p><b>Other health care and social care provision reasonably required by the child or young person, which is not linked to their learning difficulties or disabilities</b></p>	<ul style="list-style-type: none"> <li>• The local authority and CCG may also choose to specify other health care and social care provision reasonably required by the child or young person, which is not linked to their learning difficulties or disabilities.</li> <li>• This will enable the local authority to include in the Plan health provision for an illness unrelated to SEN, where this treatment has been assessed as necessary and where coordination with the Plan makes sense.</li> <li>• For social care, this might include child protection or safeguarding information, where it is unrelated to the SEN but appropriate to include this.</li> </ul>

<p><b>The name, and the type, of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person</b></p>	<ul style="list-style-type: none"> <li>• These details <b>must</b> only be included in the final plan, not the draft plan sent to parents. This is so that the LA does not pre-empt consideration of any preference for an institution which the parents or young person may state, or any representation the parents or young person may make in favour of a non-maintained institution.</li> <li>• The plan should make clear whether the institution named is under the duty to admit the child or young person in clause 43 of the Bill, or is another type of institution admitting the child or young person on a voluntary basis, for example a non-maintained early years provider.</li> </ul>
<p><b>Resourcing</b></p>	<ul style="list-style-type: none"> <li>• Where a personal budget is provided, the plan should set out the sources and amounts of funds being used to buy the provision specified, as well as the way that these funds are to be managed (by the LA, by a 3rd party, or as a direct payment).</li> </ul>
<p><b>Appendices</b></p>	<ul style="list-style-type: none"> <li>• A list of advice and information gathered during the assessment as an appendix.</li> <li>• The advice and information gathered during the assessment, in appendices, including details of who provided advice and when.</li> </ul>

## Agreeing the health provision in EHC plans

Each Clinical Commissioning Group (CCG) will determine which services it will commission to meet the reasonable health needs of the children and young people with SEN for whom it is responsible. These services should be described in the local offer. See chapter three for detail on the role of CCGs.

Where relevant local clinicians, such as community paediatricians, will participate in the development of the child's or young person's EHC plan. CCGs **must** agree the health services in the plan, even though decisions may be made by a health professional, such as the designated health officer. In most cases therefore, a CCG may have minimal involvement in the process, as this will be led by clinicians. A CCG's involvement may be limited to formally agreeing the commissioning of a service, especially to meet the complex needs of an individual, based on a

consideration of their specific circumstances (particularly where a service does not appear in the local offer).

As part of the joint commissioning arrangements, partners **must** have clear dispute resolution procedures where there is disagreement on the services to be included in an EHC plan (see Chapter 4 for more detail).

See section 7.13 regarding responsibilities for delivering health services in EHC plans.

## Responsibility for provision

Health or social care provision made wholly or mainly for the purposes of education or training **must** be treated as special educational provision. Parents and young people will have the right to appeal to the First-tier Tribunal (SEN and Disability) about such provision. This recognises the position established in case law which has established that speech and language therapy and other therapy provision can be regarded as either educational or non-educational provision, or both. It could therefore be included in the Plan as either educational or health provision or both. However, since communication is so fundamental in education, addressing speech and language impairment should normally be recorded as educational provision unless there are exceptional reasons for not doing so.

In cases where it is agreed that speech and language therapy is special educational provision, ultimate responsibility for ensuring that the provision is made rests with the local authority, unless the child's parents have made suitable arrangements.

Agreement should be reached between the local authority and health and social care partners about where provision will be specified in an EHC plan.

## 7.10 The draft plan

The local authority **must** send the draft EHC plan (including the appendices containing the advice and information gathered during the assessment) to the child's parents or the young person and give them at least 15 days to give views and make representations on the content. When the local authority sends the draft EHC plan to the parent or young person it must:

- notify them that during this period, they can request that a particular school or other institution, or type of school or other institution, be named in the plan. The draft plan **must** not contain the name of the school, maintained nursery school, post-16 institution or other institution or the type of school or other institution to be attended by the child or young person (see section 7.11);

- advise them where they can find information about the schools and colleges that are available for the child or young person to attend, for example through the local offer;
- notify them that they can request a personal budget to be drawn up (see section 7.12).

## 7.11 Requests for a particular school, college or other institution

Parents and young people have the right to request a particular school, college or other institution of the following type to be named in their EHC plan:

- a. Maintained nursery school;
- b. Maintained school, academy or free school(mainstream or special);
- c. Non-maintained special school;
- d. Further education or sixth form college;
- e. Independent school or independent specialist colleges (where they have been approved for this purpose by the Secretary of State and published on a list available to all parents and young people).

If a parent or young person makes a request for a particular nursery, school or post-16 institution in these groups the local authority **must** comply with that preference and name the school or college on the EHC plan unless it would:

- a. Be unsuitable for the age, ability, aptitude or SEN of the child or young person; or
- b. The attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources.

The local authority **must** consult the governing body, principal or proprietor of the school or college concerned and consider their comments very carefully before deciding whether to name them on the child or young person's Education, Health and Care Plan, sending them a copy of the draft Plan. If another local authority maintains the school, they too should be consulted.

The nursery, school or post-16 institution, and where relevant the other local authority, **must** respond in 15 days. Where a nursery, school or post-16 institution

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identified above is named on an EHC plan they **must** admit the child or young person.

Parents and young people may also make representations for places in non-maintained early years provision or at independent schools or Independent Specialist Providers (ISPs) that are not on the list mentioned in (f) above and the local authority **must** consider their request. The local authority is not under the same conditional duty to name the independent school or independent specialist provider but **must** have regard to the general principle in section 9 of the Education Act 1996 that children should be educated in accordance with their parents' wishes, so long as this is compatible with the provision of efficient instruction and training and does not mean unreasonable public expenditure. The local authority should confirm with the independent school or ISP that it would admit the child or young person before naming it in a plan since the school or ISP is not subject to the duty to admit a child or young person even if named in their plan.

Children with EHC plans can attend more than one school under dual placements. Dual placements enable children to have support from a mainstream and a special school. This can help to prepare children for mainstream education and enable mainstream and special schools to share and develop their expertise in supporting children with different types of SEN. In order for a child with SEN who is being supported by a dual placement to be deemed as being educated at a mainstream school they **must** spend the majority of their time (at least 51%) there.

Where appropriate, a young person with an EHC plan can attend a dual placement at an institution within the further education sector and a special post-16 institution. The local authority should work with the young person, post-16 providers and independent specialist colleges to commission such placements where that will achieve the best possible outcome for the young person. To be deemed as being educated in a mainstream further education institution, young people should spend the majority of their time there.

### **Where no request is made for a particular school or college**

Where a parent or young person does not make a request for a particular nursery, school or college, or does so and their request is not met, the local authority has a duty to provide for a mainstream setting to be specified in the EHC plan unless it would be:

- a. Against the wishes of the parent or young person; or
- b. Incompatible with the efficient education of others.

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Where the local authority considers a mainstream place to be incompatible with the efficient education of others it **must** demonstrate that there are no reasonable steps that it, or the school or college, could take to prevent that incompatibility.

### Reasonable steps

What constitutes a reasonable step will depend on all the circumstances of the individual case. The following are some of the factors that may be taken into account:

- a. Whether taking the step would be effective in removing the incompatibility;
- b. The extent to which it is practical for the early years provider, school, college or local authority to take the step;
- c. The extent to which steps have already been taken in relation to a particular child or young person and their effectiveness;
- d. The financial and other resource implications of taking the step; and
- e. The extent of any disruption that taking the step would cause.

The following are examples of reasonable steps that might be taken in different circumstances:

- a. The reasonable steps to ensure that the inclusion of a child with challenging behaviour in a mainstream primary school setting is not incompatible with the efficient education of others may include:
  - addressing factors within the class that may exacerbate the problem, for example using circle time to discuss difficult relationships and identify constructive responses;
  - teaching the child alternative behaviour, for example by taking quiet time in a specially designated area at times of stress;
  - providing the child with a channel of communication, for example use of peer support;
  - using a carefully designed system of behaviour targets drawn up with the child and linked to a reward system which, wherever possible, involves parents/carers;



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- ensuring that all staff coming into contact with the child are briefed on potential triggers for outbursts and effective ways of heading off trouble at an early stage;
  - drawing up a contingency plan if there is an outburst in class, for example, identifying with the child a key helper who can be called to remove the child from the situation; and
  - ensuring that if there is any possibility that positive handling may need to be used to prevent injury to the child/young person or others or damage to property, relevant staff have had training in appropriate techniques, that these have been carefully explained to the child and that the circumstances in which they will be used are recorded in a written plan agreed with and signed by the child and their parents/carers.
- b. The reasonable steps taken to ensure that the inclusion of a child with autistic spectrum disorder who is noisy and constantly moves around in a mainstream secondary school is not incompatible with the efficient education of others may include:
- ensuring all possible steps are taken to provide structure and predictability to the child's day – for example, by the use of visual timetables, careful prior explanation of changes to routines and clear instructions for tasks;
  - ensuring that the child is taught a means of communicating wants and needs using sign, symbol or spoken language;
  - working with a member of staff on a structured programme of activities designed to prepare him or her for joining in class or group activities, for example by using 'social scripts' to rehearse appropriate behaviour;
  - having an individual workstation within a teaching space where distractions can be kept to a minimum and everything needed for the work to be done can be organised in sequence; and
  - ensuring that all staff are briefed on the warning signs which may indicate potential behaviour challenge and on a range of activities which provide effective distraction if used sufficiently early.
- c. The reasonable steps taken to ensure that the inclusion of a young person with a learning disability, and who does not use verbal communication, in a mainstream course at a further education college is not incompatible with the efficient education of others may include:

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- the involvement of staff from the college's learning support team in the school-based transition reviews;
- an orientation period during the summer holidays, to enable the student to find his way around the college campus and meet the learning support staff;
- opportunities to practise travelling to and from college;
- the development of an individual learning programme outlining longer term goals covering all aspects of learning and development, with shorter term targets to meet the goals;
- supported access to taster sessions over a first year in college;
- a more detailed assessment of the young person's needs and wishes provided by learning support tutors during a 'taster' year;
- staff development to ensure an understanding of the student's particular method of communication;
- use of expertise in access technology to identify appropriate switches, communication boards to facilitate the student's involvement in an Entry level course;
- courses normally covered in one year planned over two years to meet the young person's learning needs.

There may be a range of reasons why it may not always be possible to take reasonable steps to prevent a mainstream place from being incompatible with the efficient education of others; for example, where their behaviour systematically, persistently or significantly threatens the safety and/or impedes the learning of others.

A decision not to educate a child or young person in a mainstream setting against the wishes of the child's parent or the young person should not be taken lightly. It is important that all decisions are taken on the basis of the circumstances of each case and in consultation with the parents or young person, taking account of the child or young person's views.

### **7.12 Requesting a personal budget**

A personal budget is an amount of money identified by the local authority to deliver all or some of the provision set out in an EHC plan. By having a say in the way this budget is used, a parent or young person can control elements of their support.

## Who can request one?

Young people and parents of children have a right to ask the local authority to prepare a personal budget once the authority has completed the assessment and confirmed that it will prepare an EHC plan.

Local authorities should have early discussions about personal budgets with the parents or young person where they give them information about the options that are available and what a personal budget might entail for them. Within this they **must** make arrangements for the provision of information concerning special educational provision for which a direct payment is available, conditions on their usage and organisations that can provide advice and assistance. This will support timely planning and avoid delays. Parents and young people should confirm their decision alongside any request for a particular school, college or other institution to be named in their EHC plan.

Parents and young people may also request a personal budget once they already have an EHC plan, during a statutory review of an existing EHC plan. Local authorities **must** consider this request, and have arrangements in place to offer information to parents and young people to help them to decide whether they wish to make such a request.

## What can be included in a personal budget?

Personal budgets should reflect the holistic nature of an EHC plan and cover the special education, health and care services specified in the plan as appropriate (see below for restrictions on use of direct payments).

Personal budgets should be based on the clear, agreed outcomes that are to be set out in the EHC plan. The decision making process to establish and agree a budget should be clear and **must** be open to challenge with parents able to request a review of decisions in relation to direct payments.

Local authorities are under a duty to prepare a personal budget when they receive a request from the parent or young person. Joint Commissioning arrangements **must** set out local arrangements for agreeing personal budgets and local authorities will need to work with their local health commissioner where the parent requests a personal budget that includes health provision as the responsibility for Personal Health Budgets sits with the CCG.

## Mechanisms for delivery of a personal budget

There are four ways parents and/or young people can choose to control their personal budget:

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- a. Direct payments – where individuals receive the cash to contract, purchase and manage services themselves.
- b. An organised arrangement – where the authority retains the funds and commissions the support specified in the plan (these are sometimes called notional arrangements and can also be used where contractual or funding arrangements mean that cash cannot be released as a direct payment or where economies of scale may be present).
- c. Third party arrangements/nominees – where funds are paid to an individual or another organisation on behalf of the parent/young person and they manage the funds.
- d. A combination of the above.

### Setting and agreeing the personal budget

The provision to be delivered through a personal budget will be set out as part of the provision specified in the EHC plan. Where a personal budget has been agreed, the plan **must** also set out the details of the needs and outcomes to be met by the budget and the arrangements for any use of direct payments including the services that they will be used for, the amount and frequency of the payments and arrangements for review. Direct payments **must** be set at a level that will deliver the provision specified in the plan.

Where local authorities have been unable to meet a request to include particular education or social care provision in a personal budget or a direct payment they **must** set out their reasons in writing and provide an opportunity for the parent or young person to request a formal review of the decision if a direct payment is not available. Decisions in relation to the health element (personal health budget) remain the responsibility of the CCG or other health commissioning bodies and where they decline a request for a direct payment, they **must** set out the reasons in writing and provide the opportunity for a formal review. Where more than one body is unable to meet a request, the local authority and partners should consider sending a single letter setting out the reasons for the decisions.

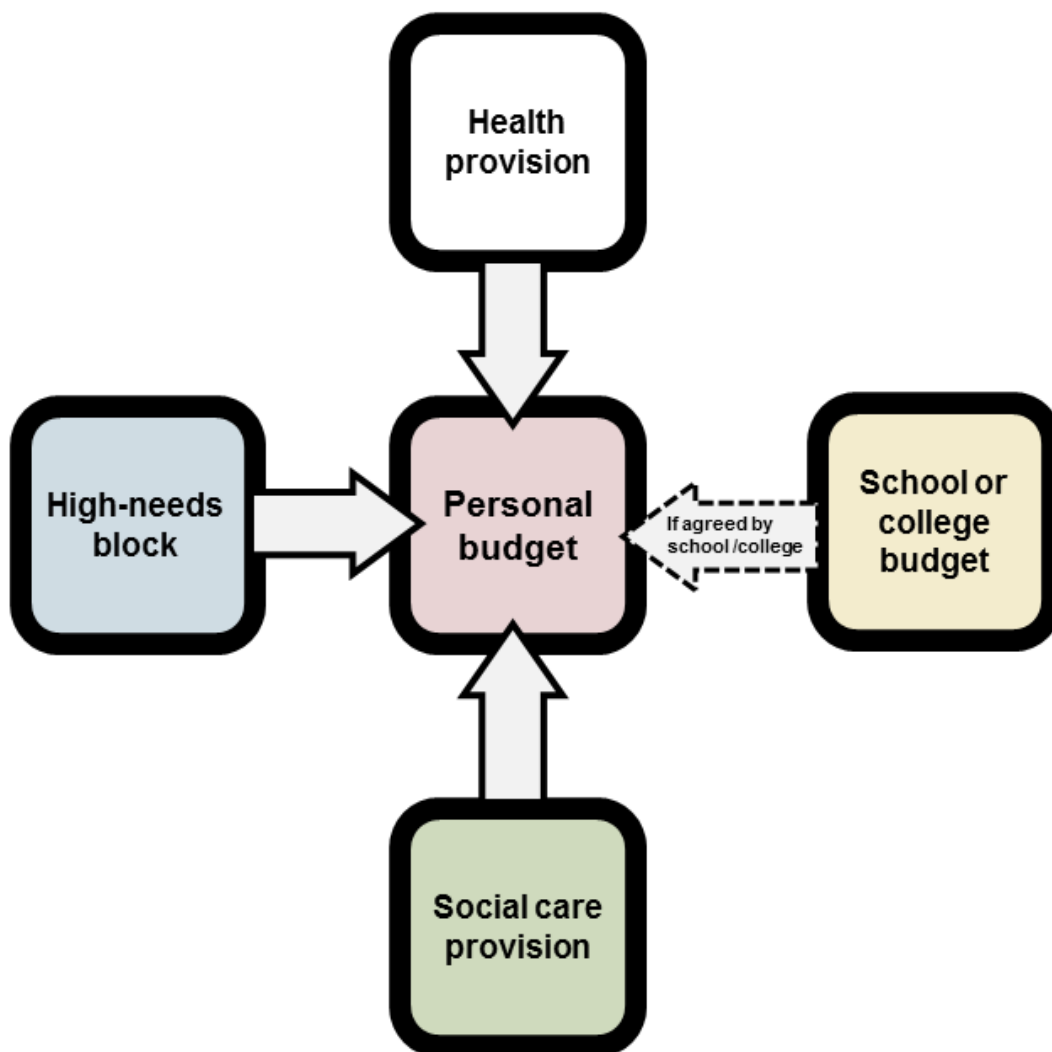
### Sources of funding

The personal budget can include funding from education, health and social care. However, the scope of that budget will vary depending on the needs of the individual as well as the eligibility criteria for the different components and the mechanism for delivery. It will reflect local circumstances and commissioning arrangements and the type of school parents (or the young person) request.

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Local authority commissioners and their partners should seek to align funding streams for inclusion in personal budgets and are encouraged to establish arrangements that will allow the development of a single integrated fund from which a single personal budget, covering all three areas of additional and individual support, can be made available. EHC plans can then set out how this budget is to be used including the provision to be secured, the outcomes it will deliver and how health, education and social care needs will be met.

Figure 3: Sources of funding for personal budgets



### Education funding

In education, core per-pupil funding and notional SEN budgets enable schools and colleges to provide teaching and support arrangements for all of their pupils and students. The special educational provision that schools are expected to make with such funding will be set out in the local offer and, as such, this funding would not normally lend itself to inclusion in a personal budget.

Education funding for a personal budget should be drawn from the local authority's high needs block and considered as part of the assessment and planning process. Schools and colleges continue to make provision from their own budgets where a child or young person has an EHC plan. This provision should always be discussed with parents, children and young people and personalised to meet their needs. The school and college can choose to make funding for this provision available as part of a personal budget.

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The high needs block can also be used to commission services from schools and colleges including from special schools. In practice, this will mean that the funding available for the SEN element of a personal budget will vary depending on local decisions about how services are commissioned and, within this, what schools/colleges will normally provide as part of the local offer and how they are funded to deliver that provision. Parents will need to be made aware that the scope for a personal budget will differ depending on their school preference – for example, if a parent seeks a special school/college placement, it may be that the school/college already provides the specialised and individualised provision required. In such a case, a personal budget would not be available from their delegated resources.

### Direct payments

Direct payments are cash payments made directly to parents, young people or their nominee, allowing them to arrange their own provision. They **must** be set at a level to deliver sufficient to cover the full cost of the special educational provision specified in the EHC plan that is to be secured by the direct payment. If it is not set at a suitable level, it must be reviewed and adjusted.

Direct payments for special educational provision, health and social care services are subject to separate regulations. These are:

- The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009;
- The National Health Service (Direct Payments) (England) Regulations 2013;
- [The Special Educational Needs (Personal Budgets and Direct Payments) Regulations 2014].

The regulations have many common requirements including those covering consent, use of nominees, certain conditions for receipt, monitoring and review of direct payments and persons to whom direct payments must not be made (such as those subject to certain rehabilitation orders).

Local authorities **must** offer direct payments for social care services. However, regulations governing the use of direct payments for special educational provision place a number of additional requirements on both local authorities and parents before a direct payment can be agreed. These include requirements to:

- a. consider the impact on other service users and value for money; and

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- b. seek agreement from educational establishments where a service funded by a direct payment is delivered on their premises. Local authorities should seek this agreement when they send a copy of the draft plan to the school or college.

Direct payments for healthcare will not be appropriate for all of the aspects of NHS care an individual may require. Services which cannot be paid for using a direct payment for healthcare include primary medical (i.e. GP services) and emergency services. Full details of excluded services will be set out in guidance provided by NHS England.

In principle, other than excluded services a direct payment could be given to anyone who needed to receive healthcare funded by the NHS where the benefits of having a direct payment for healthcare outweighs any additional costs associated with having one.

Regulations do not specify in detail who should be offered a direct payment for healthcare; this will be determined by Government commitments, the mandate to NHS England and local priorities.

- From April 2014, everyone receiving NHS Continuing Healthcare (including children's continuing care) will have the right to ask for a personal health budget, including a direct payment.
- The mandate to NHS England sets an objective that direct payments should be an option for people who could benefit from one. This includes people who use NHS services outside of NHS Continuing Healthcare.

Direct payments for health require the agreement of a care plan between the CCG and the recipient. This requirement can be fulfilled by the EHC plan as long as it includes the following information in addition to that set out above:

- an agreed procedure for discussing and managing potential risk;
- the name of the care co-ordinator responsible for managing the health care in the plan;
- how the direct payment will be monitored (including how often, what will be included in review and who will be involved); and
- the period of notice that will apply if the CCG decides to reduce the amount of the direct payment or stop it.



## 7.13 Finalising and maintaining the EHC plan

When changes are suggested to the draft plan and agreed by the local authority and the parents or young person, the draft plan should be amended and issued as the final plan as quickly as possible. The final plan should be signed and dated by the local authority officer responsible for signing off the final plan.

Where changes are not agreed, the local authority may still proceed to issue the final EHC plan. In either case the local authority **must** give the parents or young person notice of their rights of appeal to the Tribunal and the time limits for lodging an appeal, the requirement to consider mediation, information about the availability of Parent Partnership, independent advisory and disagreement resolution services, and inform them that their right of appeal cannot be affected by any disagreement resolution procedure. The child's parents or the young person may appeal against the description of SEN in the EHC plan, the special educational provision, and the school or other provider named, or if no school or other provider is named, that fact.

The final EHC plan **must** also be issued to the governing body, proprietor or principal of any school or other institution named in the EHC plan, and to the CCG that exercises functions in relation to the child or young person (or where relevant, NHS England).

The head teacher or principal of the school or other institution named in the EHC plan should ensure that those teaching or working with the child or young person are aware of their needs and have arrangements in place to meet them. Institutions should also ensure that teachers and lecturers monitor and review the child or young person's progress during the course of a year. Formal reviews of the EHC plan **must** take place at least annually. If a child or young person's SEN change, the local authority should hold a review as soon as possible to ensure that provision specified in the EHC plan is appropriate (see section 7.16).

Local authorities **must** arrange the special educational provision specified in the plan.

For social care provision specified in the plan, existing duties on social care services to assess and provide for the needs of disabled children and young people under the Children Act 1989 continue to apply. In some cases, where the young person is over 18, the care element of the EHC plan will be provided by adult services. Local authorities should explain how the adult care and support system works, and support young people in making the transition to adult services. Local authorities should have in place arrangements to ensure that young people with social care needs have every opportunity to lead as independent a life as possible and that they are not disadvantaged by the move from children's to adult services. [Subject to

Parliamentary approval, the Care Bill provides for a single national eligibility criteria for adult social care and requires that the local authority must meet eligible needs.] See section 8.4 for further details on children and young people with social care needs.

Where a health service is specified in the EHC plan, the CCG (or where relevant NHS England) **must** (under clause 42 of the Children and Families Bill) ensure that the service is made available to the child or young person, until such time as the plan is reviewed to reflect changing needs or circumstances. The joint arrangements underpinning the plan will include agreement between the partners of their respective responsibilities for funding the arrangements, to ensure that the specific services are commissioned.

## 7.14 Specific age ranges

### All children under compulsory school age

A local authority should conduct EHC assessments for children under compulsory school age when it considers that the special educational provision required to meet the child's needs cannot reasonably be provided from within the resources normally available to mainstream early years providers, or when it seems likely that the child will need an EHC plan in school. For the majority of young children with SEN, their needs are likely to be best met through the services set out in the local offer. Where an EHC plan may be needed, the local authority should fully involve parents and any early years or school setting attended by the child in making decisions about undertaking an EHC assessment and preparing an EHC plan.

### Children aged under two

Possible SEN may be identified by parents, health services, childcare settings, Sure Start Children's Centres or others. For most children under two where SEN are identified early, their needs are likely to be best met from locally available services, particularly the health service, and for disabled children, social care services provided under section 17 of the Children Act 1989. The local offer should set out how agencies will work together to provide integrated support for young children with SEN, and how services will be planned and commissioned jointly to meet local needs.

For very young children local authorities should consider commissioning the provision of home-based programmes such as Portage, if available, or peripatetic services for children with hearing or visual impairment. Parents should be fully involved in making decisions about the nature of the help and support that they

would like to receive; some may prefer to attend a centre or to combine home-based with centre-based support. Children and their parents may also benefit from the Early Support Programme which provides materials and resources on co-ordinated support. Further information about the programme can be found on the [GOV.UK website](https://www.gov.uk).

Children aged below two are eligible for an EHC plan where assessment indicates that the child is likely to have SEN which require an EHC plan when they are of compulsory school age. In these cases, the child is likely to have particularly complex needs affecting learning and development and health that have caused concern at an early stage and are likely to require a high level of special educational provision which would not normally be available in mainstream settings from delegated resources. A decision to issue an EHC plan may be made because of a child's complex needs and/or to allow access to a particular service that cannot otherwise be obtained such as home-based teaching.

### Children aged 2 to 5

Where young children are attending an early years setting, the local authority must seek advice from the setting in making decisions about undertaking an EHC assessment and preparing an EHC plan, as they would for older children. Local authorities should consider whether the child's current early years provider can support the child's, SEN, or whether they need to offer additional support through an EHC plan, which may include a placement in an alternative early years setting. Chapter 5 sets out more detail on SEN support for children in early years provision.

Where a child is not attending an early years provider the local authority should collect as much information as possible before deciding whether to assess. The local authority will then assess the evidence and decide whether the child's difficulties or developmental delays are likely to be addressed only through an EHC plan. Where a child's educational needs appear to be sufficiently severe or complex as to require attention for much of the child's school life, or the evidence points to the need for specialist early intervention, then the local authority is likely to conclude that an EHC plan is necessary.

For children within one to two years of starting compulsory education who are likely to need an EHC plan in primary school, it will often be appropriate to prepare an EHC plan during this period so the EHC plan is in place to support the transition to primary school.

Parents of children under compulsory school age can ask for a particular maintained nursery school to be named in their child's plan. The local authority **must** name the school unless it would be unsuitable for the age, ability, aptitude or SEN of the child;

or the attendance of the child there would be incompatible with the efficient education of others; or the efficient use of resources. The parents may also make representations in favour of an independent, private or voluntary early years setting for their child. If the local authority considers such provision appropriate, it is entitled to specify this in the plan and if it does, **must** fund the provision. However, it cannot require an independent, private or voluntary setting to admit a child, unless the setting agrees. The local authority should ensure that parents have full information on the range of provision available within the authority and may wish to offer parents the opportunity to visit such provision.

## Young people aged 19 to 25

For young people aged over 18, the Children and Families bill requires local authorities to have regard to their age when:

- forming an opinion about whether to conduct an assessment;
- making a decision, following an assessment, about whether to make an EHC plan;
- reviewing an EHC plan or deciding whether to secure a reassessment; and
- determining it is no longer necessary to maintain an EHC plan.

Young people aged 19-25 have the right to request an assessment of their SEN at any point. 19-25 year olds do not have an automatic right to receive support through an EHC plan, nor is it in the best interests of every young person to stay in education or training until the age of 25. However, local authorities **must not** deny or cease support through an EHC plan simply because a young person is over 18.

In every case, the local authority **must** make a judgement, in close consultation with the young person and their parents on whether agreed outcomes have been met and whether the young person has been prepared and enabled to make a successful transition into adult life.

Where a young person with an EHC plan is over 18 but needs to take longer to complete or consolidate their education or training, EHC support can continue up until the end of the academic year in which they turn 25. But the local authority **must** take into account whether it is in the best interests of an individual to stay in education or training. Many young people will want to complete their education or training and progress into adult life and work much sooner than this. If a local authority chooses to continue an EHC plan until the end of the academic year in which a young person attains the age of 25, they should continue to provide them

with the same level of support; this includes any transport support they have been providing.

Some young people will have successfully completed their time in formal education or training and will primarily require on-going health and/or care support and/or access to adult learning opportunities. These young people will be best supported via universal health services, adult care and support alongside learning opportunities in the adult skills sector" For those who have just completed an Apprenticeship Traineeship or a Supported Internship, the best option may be for them to leave formal education or training and either begin some kind of paid employment resulting from their work placement, or to access further support and training available to help them secure a job. Pathways to employment include Apprenticeships.

Apprenticeships are paid jobs that incorporate on and off the job training leading to nationally recognised qualifications. Apprentices earn as they learn and gain practical skills in the workplace. Anyone living in England, over 16 years old and not in full time education can be an Apprentice. Young people who meet the criteria for Apprenticeships can retain their EHC plan while they are participating.

19-25 year olds with EHC plans should have free access to further education in the same way as 16-18 year olds. Colleges or training providers **must not** charge young people tuition fees for such places as the funding will be provided by the local authority and the Education Funding Agency. The EFA funding Guidance is available on the [Department for Education website](#).

Apprentices aged 19-25 with Learning Difficulty Assessments/EHC plans are fully funded on the same terms and funding rates as 16-18 year old apprentices. The local offer should include Apprenticeships for this age group and full details of apprenticeship funding are available at the [Skills Funding Agency's website](#).

### **Young people who move in and out of education, including those who are excluded or who become NEET**

Where a young person is of compulsory participation age, an EHC plan should be maintained for them if they are excluded from an education or training setting or leave voluntarily. The focus of support should be to reengage that young person in full time educational participation.

Where a young person aged 18 or over leaves education or training before the end of their course or before the outcomes in their EHC plan have been met, the local authority should review their EHC plan. If this review determines that the young person wants to complete their education or training and that re-engaging them in education or training is in their interests, then support should be maintained to help them do so.

Where a young person who had an EHC plan before entering custody is released from custody the EHC plan **must** be maintained and reviewed. Local authorities should start the review when planning for the young person's release and in ideally within a month of the young person leaving custody.

### **Full time programmes for young people aged 16 and over**

In agreeing the content of an EHC plan, local authorities should consider the need to provide a full package of provision and support across education, health and care – that covers five days a week where that is appropriate to meet the young person's needs and which will equip them for adulthood. This provision and support does not all have to be at one provider and could be a combination of time at different providers and periods outside education institutions with appropriate support – including time and support for independent study. A package of provision can include non-educational activities such as volunteering or community participation. It should also contain opportunities for learning and training that will equip young people with the skills they need to make a successful transition to adulthood. This might include transport training, skills for living in semi-supported or independent accommodation, work experience etc. Full-time packages of provision and support set out in the EHC plan will need to include any time young people need to access support for their health and social care needs. More than one provider can be named on the EHC plan.

When commissioning provision, local authorities should have regard to how young people learn and the additional time and support they may need to undertake coursework and homework as well as time to socialise with their college peers within the college environment. In some cases, courses normally offered over three days may need to be spread over four to five days to enable the young person to maximise his/her learning outcomes. Local authorities will need to work with providers and young people to ensure there is a range of opportunities that can be tailored to individual needs and which may support innovative personal budget approaches.

A full time programme does not necessarily mean studying full time in a college setting. It will include, for example, Apprenticeships, Traineeships, Supported Internships or a combination of work and study with training providers from the private and voluntary sector. It will also include other learning or training a young person needs to enable them to have choice and control over their lives, live in semi-supported or independent accommodation, participate in their communities, prepare for work etc. as well as time involved in health and care related activities such as physiotherapy, gym sessions etc. A coherent, tailored full time programme may need to be delivered in a variety of settings to meet a young person's needs.

## 7.15 Transfer of EHC plans

### Transfers between local authorities

When the responsibility for a child or young person with SEN changes from the local authority maintaining the EHC plan (the old authority) to another local authority (the new authority), the old authority **must** transfer the EHC plan to the new authority. The old authority must do this within a maximum of 15 working days, beginning on the day they became aware of the move. They should also transfer any opinion they have received under the Disabled Persons (Services, Consultation and Representation) Act 1986 that the child or young person is disabled. Upon the transfer of the EHC plan, the new authority becomes responsible for maintaining the plan and for securing the special educational provision specified in it.

The duty to maintain the child or young person at the educational institution specified in the plan also transfers to the new authority. The new authority may place the child or young person temporarily at an educational institution other than that specified where appropriate to do so – for example, where the distance between the child or young person's new home and the educational institution would be too great – prior to the plan being formally amended. Otherwise, the new authority may not decline to pay the fees or otherwise maintain the child at an independent or non-maintained special school or a boarding school named in a plan unless and until they have amended the plan.

The new authority may, on the transfer of the plan, bring forward the arrangements for the review of the plan, and may conduct a new assessment regardless of when the previous assessment took place. This will be particularly important where the plan includes provision that is secured through the use of a direct payment – where local variations in the market may mean that arrangements in the original EHC plan are no longer appropriate. The new authority **must** tell the parent or young person, within six weeks of the date of transfer, when they will review the plan (as below) and whether they propose to make an assessment.

The new authority **must** review the plan before one of the following deadlines, whichever is the later:

- within 12 months of the plan being made or being previously reviewed by the old authority; or
- within 3 months of the plan being transferred

Some children and young people will move between local authority areas while they are being assessed for a plan. The "new" authority in such cases should decide

whether it needs to carry out an assessment themselves and it **must** do so if it receives a request from the parent or young person. The authority should take account of the fact that the "old" authority decided to carry out an assessment when making its decision. If it decides to do so then it should use the information from the part-completed assessment in its own assessment. Depending on how far the part-completed assessment had got, this information should help the "new" authority complete the assessment more quickly than it would have done otherwise.

## Transfers between clinical commissioning groups

Where the child or young person's move between local authorities also results in a new CCG becoming responsible for the child or young person, the old CCG **must** notify the new CCG within 15 working days of becoming aware of the move. Where it is not practicable for the new CCG to secure the health provision specified in the EHC plan, the new CCG **must**, within 15 working days of becoming aware of the move, request the new local authority to make a statutory assessment or review the EHC plan. The new local authority **must** comply with any request.

Where a child or young person does not move between local authorities, but a new clinical commissioning group becomes responsible for the child or young person (for example following a change of GP), the old CCG **must** notify the new CCG within 15 working days of becoming aware of the move. Where it is not practicable for the new CCG to secure the health provision specified in the EHC plan, the new CCG **must**, within 15 working days of becoming aware of the move, request the local authority to make a statutory assessment or review the EHC plan. The local authority **must** comply with any request.

Where a child or young person with a plan moves to Northern Ireland, Wales or Scotland, the old authority should send a copy of the child or young person's plan to the new authority or board.

## 7.16 Reviewing an EHC plan

EHC plans can be used for on-going monitoring of progress and can be reviewed regularly in whole or in part – particularly where agreed dates for specific outcomes to be achieved have been reached before an annual review is due.

Reviews **must** focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan and whether the outcomes remain appropriate. Reviews **must** be undertaken in partnership with the child and their parent or the young person, and **must** take account of their views, wishes and feelings. Reviews **must** be undertaken in full consultation with the school or other institution attended by the child or young person.



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Local authorities **must** arrange for a review of a child or young person's EHC plan at least annually. The first review **must** be held within 12 months of the date of the issue of the EHC plan. Professionals across education, health and care **must** co-operate with local authorities during reviews. Review of the EHC plan should include the review of any personal budget arrangements including the statutory requirement to review any arrangements for direct payments.

Local authorities **must** also review an EHC plan when a young person has been released from custody. The responsible LA **must** make contact with any young person who had a Plan before they entered custody and review with the Youth Offending Team whether the Plan still accurately reflects their needs

Where a young person is aged 18 and over, local authorities must take their age into account when reviewing their support and make a judgement, in close consultation with the young person and their parents, whether agreed outcomes have been met and whether the young person has been prepared and enabled to make a successful transition into adult life.

### Reviews where a child or young person attends a school or other institution

As part of the review, local authorities and the school or post-16 institution attended by the child or young person **must** co-operate to ensure a review meeting takes place. The local authority can require the school or post-16 institution to convene the meeting on the local authority's behalf and reviews will normally be held at the school or post-16 institution. There may be exceptional circumstances where it will be appropriate for the review meeting to be held by the local authority in a different location, for example, where a young person attends programmes of study at more than one institution.

The following requirements apply to review meetings where a child or young person attends a school or other institution:

- a. The child's parents or young person, a representative of the school or other institution attended, a local authority SEN officer, a health service representative and a local authority social care representative **must** be invited and given at least two weeks' notice of the date of the meeting. Other individuals relevant to the review should also be invited, including youth offending teams and job coaches where relevant.
- b. The school or other institution **must** seek advice and information about the child or young person prior to the meeting from all parties invited, and send

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any advice and information gathered to all those invited at least two weeks before the meeting.

- c. The meeting **must** focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan, and on what changes might need to be made to their support to help them achieve them, or to those outcomes. Children, parents and young people should be supported to engage fully in the review meeting.
- d. The school or other institution **must** prepare and send a report of the meeting to everyone invited within two weeks of the meeting. The report must set out recommendations on any requirements required to the EHC plan, and should refer to any difference between the school or other institution's recommendations, and those of others attending the meeting.
- e. Within four weeks of the review meeting, the local authority **must** decide whether it proposed to keep the plan as it is, amend the plan, or cease to maintain the plan, and notify the child's parent, the young person and the school or other institution attended.
- f. If the plan needs to be amended, the local authority should start the process of amendment without delay (see 7.18).
- g. If the local authority decides not to amend the plan they **must** notify the parent and young person of their right to appeal, the time limits for doing so and about disagreement resolution, mediation and parent partnership services.

### **Reviews where a child or young person does not attend a school or other institution**

The following requirements apply to review meetings where a child or young person does not attend a school or other institution:

- a. The child's parents or young person, a local authority SEN officer, a health service representative and a local authority social care representative **must** be invited and given at least two weeks' notice of the date of the meeting. Other individuals relevant to the review should also be invited, including youth offending teams and job coaches where relevant, and any other person whose attendance the local authority considers appropriate.
- b. The local authority **must** seek advice and information about the child or young person prior to the meeting from all parties invited and send any advice and

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information gathered to all those invited at least two weeks before the meeting.

- c. The meeting **must** focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan, and on what changes might need to be made to their support to help them achieve them, or to those outcomes. Children, parents and young people should be supported to engage fully in the review meeting.
- d. The local authority **must** prepare and send a report of the meeting to everyone invited within two weeks of the meeting. The report **must** set out recommendations on any requirements required to the EHC plan, and should refer to any difference between the local authority's recommendations, and those of others attending the meeting.
- e. Within four weeks of the review meeting, the local authority **must** decide whether it proposed to keep the plan as it is, amend the plan, or cease to maintain the plan, and notify the child's parent or the young person.
- f. If the plan needs to be amended, the local authority should start the process of amendment without delay (see 7.18).
- g. If the local authority decides not to amend the plan they **must** notify the parent and young person of their right to appeal, the time limits for doing so, the requirement to consider mediation, and inform them about disagreement resolution services and parent partnership services.

### Reviews of EHC plans for children aged 0-5

Local authorities should consider reviewing a plan for a child under five at least every three to six months to ensure that the provision continues to be appropriate. Such reviews would complement the duty to carry out a review at least annually but may be streamlined and not necessarily require the attendance of the full range of professionals depending on the needs of the child. Parents **must** be fully consulted on any proposed changes to the EHC plan and made aware of their rights to appeal to the Tribunal.

### Transfer between phases of education

A plan must be reviewed and amended in sufficient time prior to a child or young person moving between key phases of education, to allow for planning for and, where necessary, commissioning of support and provision at the new institution.

The review and any amendments **must** be completed by 15 February in the calendar year of the transfer at the latest. The key transfers are:

- a. Early years providers to infant school;
- b. Infant school to junior school;
- c. Primary school to middle school;
- d. Primary school to secondary school;
- e. Middle school to secondary school; and
- f. Secondary school to a post-16 institution (including a training provider or onto an Apprenticeship).

For young people moving between post 16 institutions, the review process should normally be completed by 15 February where a young person is expected to transfer to a new institution in the new academic year. However transfers between post 16 institutions may take place at different times of the year, and the review process should take account of this. In all cases, where it is proposed that a young person is to transfer between one post-16 institution and another within the following 12 months, the local authority **must** review and amend, where necessary, the young person's EHC plan at least seven months before the transfer takes place.

## Preparing for adulthood reviews

All reviews taking place from year 9 at the latest and onwards **must** include a focus on preparing for adulthood, including employment, independent living and participation in society. This transition planning must be built into the EHC plan. It is particularly important in these reviews to seek and to record the views, wishes and feelings of the child or young person. The review meeting organiser should invite representatives of post-16 institutions to these review meetings, particularly where the child or young person has expressed a desire to attend a particular institution. Review meetings taking place in year 9 should have a particular focus on considering options and choices for the next phase of education.

## 7.17 Re-assessments

The review process will enable changes to be made to an EHC plan so it remains relevant to the needs and outcomes desired for the child or young person. There

may be occasions when a re-assessment becomes appropriate, particularly when a child or young person's needs change significantly.

## Requesting a re-assessment

Local authorities **must** conduct a re-assessment of a child or young person's EHC plan if a request is made by the child's parent or the young person, or the governing body, proprietor or principal of the educational institution attended by the child or young person, or the CCG (or NHS England where relevant). A local authority may also decide to initiate a re-assessment without a request if it thinks one is necessary.

A local authority can refuse a request for a re-assessment if less than 6 months have passed since the last assessment was conducted. However they can re-assess sooner than this if they think it necessary. A local authority may also decide to refuse a request for re-assessment if it thinks that a further assessment is not necessary, for example because it considers the child or young person's needs have not changed significantly.

Where the local authority decides it does not need to re-assess a child or young person, it **must** notify the child's parent or the young person of that within 15 days of receiving the request to reassess and **must** notify them of their right to appeal, the time limits for doing so, the requirement to consider mediation, and inform them about disagreement resolution and parent partnership services.

## The re-assessment process

The process for re-assessment will be the same as the process for a first assessment (once the decision to undertake an assessment has been taken). Re-assessments **must** follow the same process as for the first EHC assessment and drawing up the EHC plan, set out earlier in this chapter, with the same timescales and rights of appeal for parents and young people.

The overall maximum timescale for a re-assessment is 14 weeks from the decision to re-assess to the issuing of the final EHC plan, however the local authority should aim to complete the process as soon as practicable.

## 7.18 Amending an existing plan

This section applies to amendments to an existing EHC plan following a review, or at any other time a local authority proposes to amend an EHC plan other than as part of a re-assessment (the process for reassessments is covered separately in 7.17).

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Where the local authority proposes to amend a plan, it **must** send the parent or young person a copy of the existing (non-amended) plan and an accompanying notice providing details of the proposed amendments, including copies of any evidence to support the proposed changes. The parent or young person should be informed that they may request a meeting with the local authority to discuss the proposed changes.

The parent or young person **must** be given at least 15 days to comment and make representations on the proposed changes.

Following representations from the parent or young person, if the local authority decides to continue to make amendments, it **must** issue the amended plan as quickly as possible and within eight weeks of the original amendment notice. If the local authority decides not to make the amendments, it **must** write to the parents or young person explaining why within the same time limit.

When the plan is amended, the new plan should state that it is an amended version of the plan and the date on which it was amended, as well as the date of the original plan. Additional advice and information, such as the minutes of a review meeting and accompanying reports, which contributed to the decision to amend the plan, should be appended in the same way as advice received during the original assessment. The amended plan should make clear which parts have been amended.

When sending the final amended plan, the local authority **must** notify the parent or young person of their right to appeal, the time limits for doing so, the requirement to consider mediation, and inform them about disagreement resolution and parent partnership services.

### 7.19 Preparing for adulthood

Local authorities should ensure that early transition planning is in place for all young people with an EHC plan focusing on outcomes and their transition to adulthood and how to achieve them. Planning should be 'person-centred' and consider the appropriate education and training provision for the young person to help them meet outcomes, such as employment, independent living, good health and community participation.

As set out in 7.16, from year 9 onwards, the review meeting **must** consider what provision is required to assist in preparing the young person for adulthood and independent living. Local authorities and education providers should support young people to a smooth transition to adulthood so they are prepared when their EHC plan ends. Both providers and local authorities should give advice to young people and help them to understand what support is available to them after they complete their

education. To help them prepare for employment, this includes support in finding a job, job coaches, and any welfare benefits that may be available. To help them prepare for independent living, it includes understanding local housing options, support in finding accommodation, and other housing support. In relation to good health, this includes understanding which health professionals will work with them when they are discharged from children's services, and how adult health services will differ from children's services. For participating in society, it includes understanding mobility and transport support, and how to find out about social and community activities. Young people should be helped to understand the range of options and support available to them, including how personal budgets can be used to support preparation for adulthood. Good transition planning should plan clear hand-overs to new professionals and services so that young people and parents know and are confident in who they are dealing with and where they need to go for help.

## Higher education

When a young person with an EHC plan takes up a place in higher education, their Education Health and Care Plan will cease. Local authorities should plan a smooth transition to the Higher Education Institution concerned (and, where applicable, to the new local authority area) before ceasing to maintain the young person's plan. Once the young person's place has been confirmed at the Higher Education Institution, the local authority **must** (with the young person's permission) pass a copy of their EHC plan to the relevant person in that institution and should do so at the earliest opportunity.

The local authority should make the young person aware of support available to them in higher education, including the Disabled Students Allowance (DSA) and how to claim it. DSAs are available to help students in higher education with the extra costs they may incur on their course because of a disability. This can include an ongoing health condition, mental health condition or specific learning difficulty such as dyslexia. Students need to make an application to the Student Loans Company, providing accompanying medical evidence (including, in the case of specific learning difficulties, a post-16 diagnostic assessment).

Applications for DSA can be made as soon as the student finance application service opens. This varies year to year, but is generally at least six months before the start of the academic year in which a young person is expecting to take up a place in higher education. Local authorities should encourage young people to make an early claim for DSA so that support is in place when their course begins. Where a young person with an EHC plan makes a claim for DSA, local authorities **must** (with the young person's permission) pass a copy of their Plan to the relevant DSA assessor, to support and inform the application as soon as practicably possible.

The local authority should also plan how health and social care support will be maintained, where it continues to be required, and whether this will continue to be provided by their home local authority or by the authority in the area they are moving to. This includes consideration of how the student will be supported if they have a dual location, for example, if they live close to their higher education institution during term time and at home during vacations. For most young people, their home local authority will continue to provide their care and support but this will depend on the circumstances of their case. The Ordinary Residence guidance published by the Department of Health provides a number of examples to help local authorities in making these decisions. The guidance is available on the [GOV.UK website](https://www.gov.uk).

## 7.20 Ceasing an EHC plan

A local authority may cease to maintain an EHC plan when any of the following conditions apply:

- a. The local authority is no longer responsible for the child or young person, for example if they have moved to another local authority area;
- b. It decides that special educational provision is no longer needed;
- c. A young person aged 16 or over takes up paid employment (including employment with training but excluding Apprenticeships);
- d. The young person enters Higher Education; or
- e. A young person aged 18 or over leaves education and no longer wishes to engage in further learning.

In making this decision, the local authority **must** consult with the child's parent or the young person and take into account whether the educational outcomes specified in the EHC plan have been achieved. They **must** also, for a young person aged 18 or over, have regard to their age. Local authorities **must** not simply cease to maintain Plans once a young person is aged over 18.

Once a young person is aged 18 or over the local authority should continue to maintain their EHC plan where it is clear that all of these conditions apply:

- a. The young person wants to remain in education or training so they can complete or consolidate their learning – including accessing provision that will help them make a successful transition to adulthood;
- b. Special educational provision is still needed;



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- c. Outcomes set out in their EHC plan have not yet been achieved; and
- d. Remaining in education or training would enable the young person to progress and achieve those outcomes – and others that may subsequently be agreed.

Where a young person of compulsory participation age leaves education or training but does not start paid employment the local authority **must** maintain their EHC plan and take appropriate steps to re-engage them in education or training as soon as possible. The local authority should review their EHC plan, applying the criteria above. Where these criteria are applicable, the local authority should maintain the plan and seek to re-engage the young person in education or training as soon as possible.

A local authority may not cease a Plan because a young person has been given a custodial sentence. The Plan must be temporarily suspended and **must** be reviewed on release.

Where a local authority is considering ceasing to maintain a child or young person's EHC plan it **must**:

- a. Inform the child's parent or the young person in writing that;
- b. Consult the child's parent or the young person;
- c. Consult the school or other institution that is named in the EHC plan.

Where, following the consultation, the local authority decides to cease to maintain the child or young person's EHC plan, it **must** notify in writing the child's parent or the young person and the institution named in the child or young person's EHC plan, of that decision.

Where the child's parent or young person disagrees with the local authority's decision to cease their EHC plan, they may appeal to the Tribunal. Local authorities **must** continue to maintain the EHC plan until the time has passed for bringing an appeal or, when an appeal has been registered, until it has been resolved.

Where the care part of an EHC plan is provided by adult services under the Care Bill because the person is over the age of 18, the Care Plan will remain in place when the other elements of the EHC plan cease. There will be no requirement that the young person is re-assessed at this point, unless there is reason to assess them because their circumstances have changed.

## 7.21 Disclosure of an EHC plan

A plan **must not** be disclosed without the consent of the child's parents or, where the young person is over 16, the young person, except for statutory purposes or in the interests of the child or young person. Statutory purposes include:

- a. Disclosure to the SEN and Disability Tribunal when parents appeal, and to the Secretary of State if a complaint is made to him under the 1996 Act.
- b. Disclosure on the order of any court or for the purpose of any criminal proceedings.
- c. Disclosure for the purposes of investigations of maladministration under the Local Government Act 1974.
- d. Disclosure to enable any authority to perform duties arising from the Disabled Persons (Services, Consultation and Representation) Act 1986, or from the Children Act 1989 relating to safeguarding and promoting the welfare of children; disclosure to OFSTED inspection teams as part of their inspections of schools and local authorities; and
- e. Disclosure to any person in connection with the young person's application for a disabled students allowance in advance of taking up a place in higher education; and to the principal (or equivalent position) of the institution at which the young person is intending to start higher education.

The interests of the child or young person include the provision of information to the child or young person's educational institution. It is important that teachers or other educational professionals working closely with the child or young person should have full knowledge of the child or young person's plan. School governing bodies should have access to a child's plan commensurate with their duties towards pupils with SEN and should always bear in mind the need to maintain confidentiality about the child in question. Disclosure in the interests of the child or young person also includes disclosure to any agencies other than the local authority who may be referred to in the plan as making educational or non-educational provision, including health and social care provision.

Local authorities may also give access to the plan to persons engaged in research on SEN on the condition that the researchers do not publish anything derived from, or contained in, the plan which would identify the child, young person or parents concerned.

## 7.22 Transport costs for children and young people with EHC plans

The parents or young person's preferred school or college might be further away from their home than the nearest school or college that can meet the child or young person's SEN. In such a case, the local authority can name the nearer school or college if that would be deemed appropriate by the local authority. If the parents prefer the school or college that is further away, the local authority may agree to this but is able to ask the parents to provide some or all of the transport funding.

Transport should only be recorded in the EHC plan in exceptional cases where the child has particular transport needs. In most cases local authorities **must** have clear general policies relating to transport for children and young people with SEN that **must** be made available to parents and young people, and these should be included in the local offer. Such policies must set out those transport arrangements which are over and above those required by section 508B of the 2006 Education and Inspections Act.

Where the local authority names a residential provision at some distance from the family's home, the local authority **must** provide reasonable transport or travel assistance; the latter might be reimbursement of public transport costs, petrol costs or provision of a travel pass.

Transport costs may be provided as part of an agreed personal budget.

## 8 Children and young people in specific circumstances

### 8.1 Introduction

There are particular groups of children and young people whose specific circumstances require additional consideration by those who work with and support their SEN. This chapter highlights these groups and provides information about managing their circumstances in order to achieve effective joined-up service provision that can help achieve good outcomes for these groups.

### 8.2 Looked after Children

Children who are being accommodated, or who have been taken into care, by a local authority (i.e. under section 20, or sections 31 or 38 of the Children Act 1989) are legally defined as being “looked after” by the local authority. Over 70% of looked after children have some form of SEN, and it is likely that a significant proportion of these will have an Education Health and Care Plan.

Local authorities will have particular responsibilities for these children and will act as a ‘corporate parent’, which means that everyone working for the local authority has a shared responsibility for safeguarding and promoting their welfare.

All maintained schools and academies and Free Schools **must** appoint a Designated Teacher for looked after children. Where that role is carried out by a person other than the SENCO designated teachers should work closely with the SENCO to ensure that the implications of a child being both looked after and having SEN are fully understood by relevant school staff.

Local authorities have a statutory duty to promote the educational achievement of the children they look after, regardless of where they are placed. Most local authorities have someone, often known as a Virtual School Head (VSH), who leads a virtual school team, which tracks the progress of children looked after by the authority as if they attended a single school. The Children and Families Bill will require every local authority to appoint an officer who is an employee of that or another authority to discharge that duty. SEND departments should work closely with the VSH as well as social workers to ensure that local authorities have effective and joined up processes for meeting the SEN of looked after children.

Local authorities are required to act under statutory guidance issued by the Secretary of State when exercising their social services functions with regard to the

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children they look after. This is set out in volume 2 of the Children Act 1989 guidance.

This means that looked after children will have a considerable amount of planning made around their care, health and education needs. They will have a Care Plan, which sets out how the local authority will meet the care needs of the child, addressing all important dimensions of a child's developmental needs. These include health, education, emotional and behavioural development, identity, family and social relationships, social presentation and self-care skills. The Care Plan will specifically include a Personal Education Plan (PEP) and a Health Plan (both are a statutory requirement) which will particularly assess and set out the child's education and health needs. It may be through making these assessments that a child's potential SEN will be identified.

Where a looked after child is being assessed for SEN it is vital to take account of information set out in that Care Plan. SEN professionals must work closely with other relevant professionals involved in the child's life as a consequence of his/her being looked after. These include the social worker, designated doctor or nurse, Independent Reviewing Officer (IRO), Virtual School Head (VSH) and designated teacher in school. This will ensure that the child's EHC plan works in harmony with his/her Care Plan and adds to, but does not duplicate, information about how education, health and care needs will be met. It is essential to involve the child, carers and, where appropriate, parents in the planning process.

A significant proportion of looked after children live (with foster carers or in a children's home) and attend schools in a different local authority area to the local authority that looks after them. Where an assessment for an EHC plan has been triggered, the authority that carries out the assessment is determined by clause 23 of the Children and Families Bill. This means that the assessment must be carried out by the authority where the child lives (i.e. ordinarily resident), which may not be the same as the authority that looks after the child.

Local authorities should consider very carefully how personal budgets may work for looked after children. In many cases local authorities will decide that it is not appropriate. However, for a child in a stable, long term foster placement it may be appropriate for the carer to take on that responsibility.

The Care Planning Regulations specify the frequency with which Care Plans are reviewed. It is important to ensure the annual review of an EHC plan coincides with one of the child's Care Plan statutory reviews. This could be done as part of the review of a child's PEP which feeds into the review of the wider Care Plan. Social workers and SEN teams will need to work closely together to ensure that transitions from being looked after to returning home are managed effectively.

## 8.3 Care leavers

Some children will cease to be looked after at 16 or 17 and others will continue to be looked after until their 18<sup>th</sup> birthday. Local authorities continue to have responsibilities to provide a Personal Adviser and prepare a Pathway Plan. The Personal Adviser is there to ensure that care leavers are provided with the right kind of personal support, for example by signposting them to services and providing advice. The Pathway Plan plots transition from care to adulthood for care leavers up to the age of 25 if they remain in education and/or training or are not in employment, education or training and plan to return to education and/or training. In reviewing their EHC assessment and planning arrangements local authorities should ensure good advanced planning involving the young person and Personal Adviser.

## 8.4 SEN and social care needs, including children in need

### Children's social care

There is a statutory duty, under section 17 of the Children Act 1989, for local authorities to provide services to meet the needs of 'children in need' in their area, including disabled children. In the case of services for disabled children under section 2 of the Chronically Sick and Disabled Persons Act 1970, once the local authority is satisfied that it is necessary to provide assistance under that section, the authority is under a duty to provide that assistance.

Following acceptance of a referral by the local authority children's social care, a social worker should lead a multi-agency assessment under section 17 of the Children Act 1989. Local authorities have a duty to ascertain the child's wishes and feelings and take account of them when planning the provision of services.

The purpose of social care assessments are:

- to gather important information about a child and family;
- to analyse their needs and/or the nature and level of any risk or harm being suffered by a child;
- to decide whether the child is a child in need (section 17 of the Children Act 1989) and/or is suffering significant harm (section 47 of the Children Act 1989) and;
- to provide support to address those needs to improve the child's outcomes.

A good assessment supports professionals to understand whether a child has needs relating to their care or a disability and/or is suffering or likely to suffer significant harm. Working Together 2013 sets out the process for managing individual cases which are referred to children's social care. All assessments should be child centred, focused on outcomes, transparent, timely and proportionate to the needs of each child. The maximum timeframe for a social care assessment to conclude sufficient that a decision can be taken on next steps is 45 working days from the point of referral.

Local authorities with their partners should develop and publish local protocols for assessment which should set out how the needs of disabled children will be addressed in the assessment process and clarify how statutory social care assessments will be informed by and inform other specialist assessments including EHC assessments leading to an EHC plan.

Where there is an EHC assessment, it should be an holistic assessment of the children or young person's education, health and social care needs. EHC assessments should be combined with social care assessments under section 17 of the Children Act 1989. Working Together 2013 makes clear that section 17 assessments may be combined with other assessments including assessments in relation to SEN. The process for managing individual social care assessments is set out in Working Together 2013.<sup>9</sup>

For all children where significant harm is suspected, the social worker should coordinate any outward facing plan with other professionals. Where there are specific child protection concerns resulting in action under section 47 of the Children Act, careful consideration should be given to how closely the assessment processes across education, health and care can be integrated, in order to ensure that the needs of vulnerable children are put first.

Where possible, EHC plan reviews should be synchronised with social care reviews, and must always meet the need of the individual case.

## **Power to continue children's social care services to those aged 18 to 25**

Where a local authority has been providing children's social care services to a young person under the age of 18, and they have an EHC plan in place, local authorities can continue to provide these services on the same basis after the age of 18.

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<sup>9</sup> Working Together to Safeguard Children can be downloaded from the [DfE website](#). A [web text version](#) is also available.

The local authority retains discretion over how long it chooses to provide these services, so long as an EHC plan remains in place. Where the young person no longer has an EHC plan, the local authority no longer has the power to extend the provision of these services to young people over 18.

This will enable local authorities to agree with young people when the most appropriate time for transition to adult services will be, avoiding key pressure points such as exams or a move from school to college. Poorly timed and planned transition to adult services will have a detrimental effect on achievement of outcomes and may result in young people requiring far longer to complete their education or leaving education altogether. This can have a negative impact on their health and care needs and it is essential that the transition between children's and adult's services is managed and planned carefully.

## Adult social care

The Care Bill seeks to smooth transition (as described below) but the principles are not new.

### **In 2010 in 'Prioritising Need'<sup>10</sup> the Government sets out the following guidance:**

Local authorities should have in place arrangements to ensure that young people with social care needs have every opportunity to lead as independent a life as possible and that they are not disadvantaged by the move from children's to adult services. Transition planning for young people with complex needs requires a coordinated multi-agency approach. In particular, directors of adult social services should work in partnership with directors of children's social services to carry out joint appraisals of local arrangements, commissioning strategies and the outcomes for young disabled people and their families. Young people and their families should also be involved in this strategic planning process.

Successful transition depends on early and effective planning, putting the young person at the centre of the process to help them prepare for transfer to adult services. The process of transition should start while the child is still in contact with children's services and may, subject to the needs of the young person, continue for a number of years after the transfer to adult services. This will ensure that young people and parents know about the opportunities and choices available and the range of support they may need to access.

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<sup>10</sup> Available at the [National Archives website](#).



Further information about preparing for transition can be found in the guidance Transition: getting it right for young people (2006), A transition guide for all services (2007) and Transition: moving on well (2008).

As part of transition planning, the needs of carers should also be assessed or reviewed to explore the impact of changing circumstances on the carer.

### **Links to the Care Bill [subject to Parliamentary approval]**

The Care Bill aims to improve transition for young people to adult care and support, in particular:

- **To aid planning** for young people and carers of children (who are likely to have needs for care and support when they turn 18 and where a local authority considers there is “significant benefit“ to the child or their carer, as appropriate, in doing so)
- **To provide information** to them about whether they are likely to be eligible, and advice and information about what can be done to meet eligible needs and what can be done to prevent or delay the development of needs.
- **To allow flexibility** for assessments to take place at the best time for each individual and for them to take place jointly with other assessments.
- **To provide continuity** so that where a young person is receiving children’s services those services will not stop abruptly when the person turns 18, but must continue until adult services have a plan in place.
- **To support cooperation** within and between local authorities to aid transition between services.

The Care Bill says that local authorities must cooperate in relation to smoothing transition to adult care and support. It also provides a power for local authorities to assess the needs for care and support of a child, a child’s carer and a young carer where it considers there is significant benefit to the individual in doing so and it appears that the person is likely to have needs that require support after the child becomes 18. This applies both to children who are receiving a relevant children’s service and children who are not currently in receipt of services, but who are likely to require them on becoming 18.

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A local authority **must** involve the child (or child's carer, where relevant) in the assessment and the assessment **must** consider:

- the outcomes that the child wants to achieve;
- whether the provision of care and support could help to achieve those outcomes;
- whether there are matters other than formal care and support that might help a child achieve those outcomes.

Where it decides to assess, the local authority **must** provide to the child or carer information, including an indication of whether they are likely to be eligible for care and support, advice and information about what can be done to meet eligible needs, and what can be done to prevent or delay the development of needs. If a local authority decides not to assess they **must** provide reasons and advice and information about what can be done to prevent or delay the development by the young carer of need for support in the future.

No child reaching the age of 18 should go without the care and support they need around the point of transition. Under the Care Bill local authorities are required to maintain children's services until a decision has been taken regarding whether they require adult care and support in place, so that there is no gap.

### 8.5 Children and young people educated out of area

Where a child or young person being educated out of the local authority's area is brought to the local authority's attention as potentially having SEN, the local authority should decide whether to assess the child or young person and decide whether an EHC plan is required.

Where a child or young person being educated out of area has an EHC plan, the local authority must ensure that the special educational provision set out in the plan is being made. They must review the EHC plan annually. Local authorities can make reciprocal arrangements to carry out these duties on each other's behalf. If the child or young person is placed by a local authority at an independent special school, non-maintained special school or independent specialist provider, the local authority **must** pay the appropriate costs.

### 8.6 Children and young people with SEN educated at home

Under section 7 of the Education Act 1996 parents have the right to educate children, including children with SEN, at home. Such education must be suitable to

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the child's age ability, aptitude and special educational needs. Local authorities should work in partnership with, and support, parents to ensure that the special educational needs of these children are met where the local authority already knows the children have SEN or the parents have drawn the children's special needs to the authority's attention. Local authorities do not have a duty under section 22 of the Children and Families Act to assess every home educated child to see whether they have SEN or not. [Guidance](#) is available to local authorities from the Department for Education on funding provision for home educated children.

In cases where local authorities and parents agree that a child or young person with an EHC plan should be educated at home and home education is 'named' on the plan, the local authority is under a duty to arrange the special educational provision set out in the plan.

In cases where the EHC plan 'names' a school and the parents decide to take the child or young person out of school to educate at home, the local authority is not under a duty to make the special educational provision set out in the plan, provided it is satisfied that the arrangements made by the parents to educate the child or young person at home are suitable. The local authority **must** review the plan annually to assure itself that the provision set out in the plan continues to be appropriate and the child's SEN continue to be met. Where the local authority has decided that the provision is appropriate, it should ensure that the plan names the type of school that would be suitable, but states that the parents have made their own arrangements under section 7 of the Education Act 1996.

Local authorities do not have the right of entry to the family home to check that the provision being made by the parents is appropriate and may only enter the home at the invitation of the parents. If it is not possible to do this, the authority should discuss with the parents how else it can satisfy itself as to the suitability of the education, bearing in mind its obligations at the same time as the wishes of the parents and the child. Parents should be encouraged to see this process as part of the authority's overall approach to home education of pupils with SEN, including the provision of appropriate support, rather than an attempt to undermine parents' right to home educate.

Local authorities should not assume, because the provision being made by parents is different from that which was being made or would have been made in school, that the provision is necessarily unsuitable. The local authority's duty is to ensure that the child or young person's SEN are being met and they should make an objective judgement about whether the methods adopted by parents achieve that end. Local authorities are encouraged to help parents exercise their right to home educate their children. They should work with parents and consider using their power to make provision in the home to help parents make suitable provision.

In some cases a local authority will conclude that, even after considering its power to provide support to home educating parents, the provision that is or could be made for a child or young person with a plan does not meet the child or young person's needs. Local authorities have a duty to 'make arrangements to enable them to establish (so far as it is possible to do so) the identities of children and young people in their area who are of compulsory school age but are not registered pupils at a school and are not receiving suitable education otherwise than at school'. Once these children have been identified, local authorities have a duty to act. A local authority is required to intervene through the school attendance order framework 'if it appears ... that a child of compulsory school age is not receiving suitable education, either by regular attendance at school or otherwise'.

Parents may also educate children or young people who have SEN but do not have EHC plans. Where such children or young people are educated at home it may be because parents felt that the special educational support being provided in the school was insufficient to meet the child or young person's needs. In such cases the local authority should consider whether a statutory assessment is required. As with children and young people with plans, local authorities should work with parents and consider whether to make provision in the home to help the parents make suitable provision.

Young people may also be educated at home in order to meet the requirement to participate in education and training until 18.

## **8.7 Children with SEN in alternative provision (including pupil referral units, alternative provision academies and alternative provision free schools)**

Alternative provision is education arranged by local authorities or schools for children and young people who, because of behaviour, illness or other reasons, would not otherwise receive suitable education. It should provide education on a par with that of mainstream provision, including appropriate support to meet the needs of children and young people with SEN.

Alternative providers **must** ensure that the education children receive is of good quality, as defined in the statutory guidance Alternative Provision (2013), allows them to take appropriate qualifications, prevents them from slipping behind their peers in school and enables them to reintegrate successfully back into school as soon as possible. For children with SEN, the alternative provider **must** ensure that any needs previously identified through school support or in an EHC plan continue to be provided.

The commissioner of alternative provision (whether this is a local authority or a school) is responsible for ensuring that alternative provision meets the SEN of the pupil. Where a child or young person with an EHC plan is placed in alternative provision, the name of the education institution on the plan can be amended to name the alternative provider. The alternative provider is responsible for supporting the child or young person with their SEN, including provision set out in the plan.

The alternative provision statutory guidance is set out at the [Department for Education's website](#).

## 8.8 Young offenders in custody

Where children and young people with identified SEN are detained in custody it is important that information about their SEN is shared with those who are responsible for education in custody at the earliest opportunity. This will enable the right support to be put into place as soon as possible. Local authorities should put appropriate arrangements in place to ensure that this information can be provided without delay. Similarly the expectation is that the responsible Clinical Commissioning Group will share health information with the relevant NHS England provider and the secure establishment when the young offender enters custody.

Where the young offender is under 18 the Youth Offending Team (YOT) will notify a young person's home local authority about their detention, transfer or release and will facilitate the transfer of information. This should include information about a young person's Education Health and Care Plan and if a young person has SEN but not an EHCP it should include information about any assessments the young person has had and any SEN which have been identified. The Skills Funding Agency, which is responsible for education for those aged 18 and over in custody, requires its providers who deliver education and training in the adult secure estate ('OLASS providers') to exchange information as prisoners move around the system.

### Identifying SEN in custody

If SEN is identified in a child or young person under the age of 18 in a Young Offenders Institution the host local authority **must** notify the young person's home local authority on release (in accordance with section 562H of the Education Act 1996 as amended by the ASCL Act 2009) and, if necessary, a full assessment will be carried out on release. Similarly, it is important for an education provider in an adult prison who identifies SEN in a young person aged 18-25 to notify the young person's home local authority on release if the young person wants to continue in education so that, if necessary, a full assessment can be carried out.

## Education in Custody for young people under 18

Youth Offending Teams (YOTs) **must** notify the local authority in which the child or young person is detained (host) and the local authority in which the young person normally resides (home) when a child or young person (under 18) has become subject to a detention order or if they are being transferred between relevant youth accommodation (Section 39A of the Crime and Disorder Act 1998).

Where a young person had an EHCP immediately before entering a Young Offenders Institution the host local authority **must** ensure they receive appropriate special educational provision, corresponding as closely as possible to that set out in the Education Health and Care Plan (Section 562C of the 1996 Education Act).

In such cases the home local authority may supply appropriate goods and services to the local authority where the young person is detained or to the person making the special educational provision [Section 562D of the Education Act 1996].

If the young person had an EHC plan immediately before detention in a Young Offenders Institution the local authority maintaining the plan **must** inform the host local authority [Section 562G of the Education Act 1996]. This information should also be shared with the YOT and the young offenders' institution (YOI).

The home local authority is under a duty to monitor the education and training of all children or young persons (under 18) in detention and to take such steps as they consider appropriate to promote the fulfilment of his or her learning potential while they are detained and on their release (Section 562B of the Education Act 1996<sup>11</sup>). It is therefore important for the home local authority to continue to engage with the young person while they are in custody. They should also work with the host local authority and the YOI to ensure that appropriate special educational provision is in place for the young person as soon as possible. Appropriate provision is the provision that was in place immediately before custody and set out in the EHC plan, or provision that is as close to that as possible.

## Health care in custody

The relevant NHS England provider and the secure establishment is expected to consider the *Health Care standards for Children and Young people in Secure Settings* when organising health care for 10-17 year olds in secure settings. These Standards include guidance on entry and assessment, care planning, physical and mental health, transfer and continuity of care and multi-agency working. They are available at the [Royal College of Paediatrics and Child Health website](#).

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<sup>11</sup> As inserted through the Apprenticeship Skills and Learning Act 2009, S 50

## **Education on release from custody for young people under 18**

The Youth Offending Team **must** notify the host and home local authority when it becomes aware that a young person is due to be released from relevant youth accommodation. If the young person had an Education Health and Care Plan before custody the responsible LA has a duty to maintain and review the Plan. Local authorities should work with the Youth Offending Team when undertaking this duty to decide whether the EHC plan still accurately reflects the young person's needs. Where possible this review should take place as early as possible when planning for release and ideally within a month of release from custody.

## **Transition from youth justice to adult secure estate**

A young person still in custody after their eighteenth birthday can be transferred into the adult estate. In line with the National Offender Management Service (NOMS) Transitions Protocol on managing transitions in custody, the youth justice establishment should ensure that all relevant SEN information is passed to the young adult YOI prior to transfer taking place.

## **Education in custody for young people aged 18 and over**

The Chief Executive of Skills Funding has a duty to encourage those in adult detention to participate in education and training and to have regard to the needs of those with learning difficulties. If the young person had an EHC plan immediately before custody the LA should pass the information to those providing education in prison to enable appropriate provision to be put in place for them as soon as possible. The offender learning funding arrangements provide for Additional Learner Support funds to ensure provision is available.

## **Education on release from custody for young people aged 18 and over**

If young people with an EHC plan immediately before custody plan to continue their education on release, the OLASS provider and the National Careers Service provider should liaise to ensure the responsible local authority is aware so that they can review the EHC plan. Where appropriate those reviews can take place before release.

## **Youth Offending Teams**

Youth Offending Teams (YOTS) work with young offenders (under 18) and those at risk of offending. YOTs are responsible for a range of youth justice services,

including compiling pre-sentence reports, supervision of young offenders serving sentences in the community and supervision of those released from custody.

A significant proportion of young offenders are found to have some level of SEN. YOTs' role working with these children and young people, identifying the factors contributing to their offending and planning the resettlement of those released from custody, makes them key partners for local authority SEN services, in particular in the following areas:

- helping to develop the local offer and reviewing provision;
- supporting SEN assessments and the development of EHC plans for those at risk of offending or already in the Youth Justice System;
- notifying a young person's local authority about their detention in custody, transfer or release;
- coordinating the prompt sharing of assessments and other relevant information with youth justice system practitioners when a young person enters the secure estate.

Local authorities **must** ensure that Youth Offending Teams are involved in local commissioning arrangements and in assessment and planning for EHC plans. Youth Offending Teams **must** co-operate with local authorities in helping them fulfil their duties towards young offenders under 18 with SEN, including those identified as being at risk of offending and those serving community or custodial sentences. It is also good practice for local authorities to involve the relevant probation services for young offenders who are aged 18 or over.

## 8.9 Children of Service personnel

The Children's Education Advisory Service (CEAS) within the Ministry of Defence provides advice and guidance to Service parents, educational establishments and local authorities on educational issues relating to Service children, including issues relating to SEN. Service Children's Education (SCE) provides education to Service children in schools overseas and draws up the equivalent of EHC plans.

Children whose parent(s) are Service personnel may face difficulties that are unique to the nature of their parent(s) employment. These needs may arise from:

- **service induced mobility** – Service personnel may relocate more often than the rest of the population and, sometimes, at short notice. Such transitions



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should be well managed to avoid Service children with SEN experiencing delays in having their needs assessed and met;

- the **deployment** of parent(s) to operational arenas, while not constituting a SEN in itself, this may result in a Service child experiencing anxiety, dips in educational performance and/or emotional difficulties. Children may also be affected similarly by siblings' deployment.

### Action to take in respect of Service children with SEN

In having regard to this Code of Practice and in meeting the aspirations of the Armed Forces Covenant, which attempts to eliminate or mitigate some of the potential disadvantages faced by Service families, all those with statutory responsibilities towards Service children with SEN should ensure that the impact of their policies, administrative processes and patterns of provision do not disadvantage such children because of their Service-related lifestyle.

In respect of Service children, schools and other education providers should:

- ensure that mechanisms are in place to enable effective and timely receipt and dispatch of all relevant records for Service children with SEN moving between schools in the UK and overseas, to enable effective planning – ideally, in advance of the child's arrival in school. SCE has developed Special Educational Needs Transfer of Records and Information (SENTRI) to support this process. Schools are advised to use this and it can be downloaded from the [Service Children's Education website](#). Maintained schools **must** transfer information, including SEN information, about pupils to other schools in the UK (maintained or independent) in accordance with the Education (Pupil Information) (England) Regulations 2005. In addition, the Pupil Information Profile for Service Children, which includes details of a child's SEN, is available for use by schools across the UK and overseas;
- ensure that all reviews for Service children with SEN explicitly consider those Service-related issues (e.g. Service-induced mobility) relevant to the outcomes of those reviews;
- ensure that access to appropriate assessments, interventions and provision is determined solely on the nature, severity and complexity of the needs presented by Service children with SEN and not related to the amount of time they have left in a particular school;

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- consider how any funds received through the Service Pupils' Premium might be used to improve their overall approaches to meeting the SEN of Service children.

Local authorities should:

- when commissioning services for children with SEN, take account, with their partners (e.g. Health and Social Care), of the particular needs of any Service communities within their boundaries;
- for a Service child with SEN, consider the likely impact on the child's needs and the provision made to meet them of any relevant Service-related issue, when carrying out a statutory assessment or making an Education, Health and Care Plan (EHC plan). Authorities **must** seek advice from CEAS, acting on behalf of the Secretary of State for Defence, when carrying out a statutory assessment of a Service child's needs;
- when children move home across local authority boundaries, transfer the EHC plan from the 'old' local authority to the 'new' local authority within 15 days of the move. The 'new' local authority will have to tell the parents within 6 weeks transfer of the plan whether the authority will bring forward the annual review of the plan and whether it plans to reassess the child. From the transfer of the plan the 'new' local authority has the same duty to arrange the special educational provision set out in it as the 'old' local authority, although a child may have to be placed in a school other than the one named on the plan if the distance of the move makes it impractical to send the child to the 'named' school;
- work with each other, particularly those which have bases within their areas, and CEAS so that special educational provision can be made as soon as a child arrives in the new authority. Anticipated moves should not be used to delay the provision of appropriate support for children or the carrying out of statutory assessments;
- use all relevant evidence, including statements made for Service children in Wales and Northern Ireland, as well as Co-ordinated Support Plans made for them in Scotland and SCE 'EHC plans', when considering provision for Service children with SEN;
- when Personal Budgets are agreed with mobile Service parents, work with sending/receiving local authorities and the parents concerned to ensure that adequate, appropriate and timely arrangements are made in the receiving

authority to ensure continuity of those elements of the overall provision purchased for Service children with SEN by the Personal Budgets allocated.

## **SEN and Disability Tribunals**

The First Tier Tribunal (SEN and Disability) should, in reaching decisions about appeals from Service parents, consider, on the basis of the evidence available to them, the extent to which Service-induced mobility has had, is having and will have an impact on the appropriateness and effectiveness of the provision offered by local authorities and that requested by the parents.

## **Further information**

Further information and advice about the education of Service children with SEN, in England or elsewhere in the world, including the public funds available for boarding placements and the services available in SCE schools overseas, is available from the [Children's Education Advisory Service \(CEAS\) information page on the GOV.UK website](#).

## 9 Resolving disputes

*[Draft regulations for consultation relevant to this chapter are:*

- The Special Educational Needs (Appeal) Regulations, Clause 51;
- The Special Education Needs (Mediation) Regulations, Clause 52

### 9.1 Principles for resolving disputes

The advice in this chapter on resolving disputes is based on the following principles:

- decisions about provision for children and young people with SEN should be made jointly by providers, parents, and children and young people themselves;
- relations between education, health and social care services and parents and young people should be marked by open communication so that parents and young people know where they are in the decision making process and the reasons why decisions have been made;
- parents and young people should be given support, where necessary, so that they can take part in decision making and complaints processes;
- education, health and social care providers should have complaints procedures which, along with details about appealing to the SEND Tribunal, be made known to parents and young people through a single point of access (see Chapter3).

### 9.2 Early resolution of disagreements

Decisions about provision for children and young people with SEN should be made as soon as possible. In most cases this will be achieved by providers, local authorities and CCGs working closely together and agreeing what should be provided with parents and young people.

However, where agreement cannot be reached early resolution of disagreements benefits parents and young people and can avoid unnecessary stress and expense. The local information, advice and support service can provide access to support for parents and young people in arranging and attending meetings as well as offering advocacy support.

## 9.3 Disagreement resolution arrangements

### Disagreement resolution services

Local authorities **must** make disagreement resolution services available to parents and young people. Use of the disagreement resolution services is voluntary and has to be with the agreement of both parties. The service, while commissioned by it, **must** be independent of the local authority. Parents and young people can also access informal support in resolving disagreements through the local impartial information, advice and support service.

Disagreement resolution arrangements cover all children and young people with SEN and a wide range of disagreements. They are available to parents and young people to resolve disagreements about any aspect of SEN provision alongside other education complaints procedures set out in this chapter and can be used before, at the same time, or after those procedures.

Disagreement resolution arrangements are distinct from the mediation arrangements set out in 9.5 below which specifically apply to parents and young people who are considering appealing to the Tribunal, although local authorities may contract disagreement resolution services and mediation from the same providers.

The disagreement resolution service is to help resolve disagreements about two types of complaints or prevent them from escalating further:

- the first is between parents or young people and local authorities, the governing bodies of maintained schools and maintained nursery schools, early years providers, further education institutions or the proprietors of academies about how these authorities, bodies or proprietors are carrying out their education, health and care duties for children and young people with SEN. These duties include duties on the local authority to keep their education and care provision under review, the duties to assess and draw up EHC plans and the duty on governing bodies and proprietors to use their best endeavours to meet children and young people's SEN.
- the second is disagreements between parents or young people and early years providers, schools or post-16 institutions about the special educational provision made for a child or young person, whether they have plans or not.

Local authorities **must** make the availability of disagreement resolution services known to parents, young people, heads, governing bodies, proprietors and principals of schools and post-16 institutions in their areas and should make them known to

others they think appropriate. Details of the dispute resolution arrangements **must** be set out in the local offer.

A decision by parents and young people not to use disagreement resolution services has no effect on their right to appeal to the Tribunal and no inference will be drawn by the Tribunal if the parties to a dispute have not used the disagreement resolution services. Disagreement resolution meetings are confidential and without prejudice to the Tribunal process and the Tribunal will disregard any offers or comments made during them. Partial agreement achieved by use of disagreement resolution services can help to focus any subsequent appeals to the Tribunal on the remaining areas of disagreement.

### **Effective disagreement resolution services**

In contracting an effective disagreement resolution service, local authorities should:

- take responsibility for the overall standard of the service;
- have clear funding and budgeting plans for the service - parents and young people should not be charged for the use of the service and schools, colleges and early years providers should be clear about how the service can be accessed and how it will be funded;
- ensure that the service is impartial;
- ensure that the service has a development plan which sets out clear targets and is regularly reviewed;
- ensure that the independent persons appointed as facilitators have the appropriate skills, knowledge and expertise in disagreement resolution; an understanding of SEN processes, procedures and legislation; have no role in the decisions taken about a particular case, nor any vested interest in the terms of the settlement; maintain confidentiality; carry out the process quickly and to the timetable decided by the parties;
- establish protocols and mechanisms for referring parents and young people to disagreement resolution and, where necessary, providing advocacy support to help them take part;
- establish a service level agreement for delivering the service which sets out the appropriate standards expected of, and the responsibilities delegated to, the provider. There should be appropriate arrangements for overseeing, regularly monitoring and reviewing the performance of the service, taking account of local and national best practice; and

- seek feedback from the service to inform and influence local authority and provider decisions on SEN policies, procedures and practices.

## 9.4 Local complaints procedures

### Early education providers' and schools' complaints procedures

The Early Years Foundation Stage (EYFS) Statutory Framework requires all registered childcare providers to have a complaints procedure.

For childcare provision registered with Ofsted concerns should be raised directly with the manager or provider in the first instance. For complaints in writing the nursery provider must respond within 28 days. Where the childcare provision is run by a school, the school's complaints procedure should be used.

All state-funded schools are required to have a procedure to deal with complaints and to publish details of their procedure. Complaints about statutory EHC assessments and plans are for the local authority and appeals about the local authority's decisions on these matters are for the SEN and Disability Tribunal.

The governing bodies of maintained schools should make efforts to ensure that anyone who wishes to make a complaint is treated fairly, given the chance to state their case, provided with a written response (including the rationale for any decisions) and informed of their appeal rights. If the complainant remains concerned after following the local complaints procedure, he or she could ask the Department for Education's School Complaints Unit to take up the matter.

Further details on making complaints to the Department about schools are available at [the Department's website](#).

The proprietors of academies and free schools **must** ensure that a complaints procedure is drawn up which is in writing and is made available to parents. The procedure **must** allow for a complaint to be considered informally in the first instance and then, if the parent remains dissatisfied there should be a formal procedure for the complaint to be made in writing. If the parent is still dissatisfied the complaint can then be heard in front of a panel. Should the parent still not be satisfied they can complain to the Education Funding Agency (EFA) who will look at whether the academy handled the complaint properly. Further details about making a complaint to the EFA about academies and free schools are also available at the website address given in the previous paragraph.

## Complaints to Ofsted

Ofsted can consider complaints from parents about early years providers and schools but only where the complaint is about the early years provision or the school as a whole rather than in relation to individual children, and where the parent has tried to resolve the complaint through the early years provider's or school's own complaints procedure.

Further information about complaints to Ofsted about early years or childcare provision further information can be found on [Ofsted's website](#).

Further details about school complaints can be found on [Ofsted's website](#).

Examples of circumstances where complaints might relate to the school as a whole include:

- the school not providing a good enough education;
- the pupils not achieving as much as they should, or their different needs not being met;
- the school not being well led and managed, or wasting money;
- the pupils' personal development and well-being being neglected.

Ofsted can respond to a complaint that relates to the whole school by bringing forward an inspection, or it could decide to look at the matters raised when next inspecting the school.

Complainants can contact Ofsted on 08456 404045 or by email [enquiries@ofsted.gov.uk](mailto:enquiries@ofsted.gov.uk)

Complainants can make a formal complaint by writing to:

Enquiries  
National Business Unit  
Ofsted  
Piccadilly Gate  
Store Street  
Manchester M1 2WD



## Post-16 institution complaints

Complaints at general further education colleges can be made informally to the teacher or the Principal, or through the college's formal complaints procedure. If the complainant is dissatisfied after going through the college's own procedure they can take this up with the Skills Funding Agency. A copy of the Skills Funding Agency's procedure for handling complaints made against colleges is available on the [Skills Funding Agency's website](#).

Complaints at sixth form colleges and some other Education Funding Agency (EFA)-funded providers can be made informally to the teacher or the Principal, or through the college's formal complaints process. If the complainant is dissatisfied after going through the provider's own procedure they can take this up with the EFA. A copy of the EFA's procedure for handling complaints is available on the [Department for Education's website](#).

## Local authority complaints procedures

Some local authorities offer a service that investigates the way in which a complaint was handled by a local authority maintained school. There are six categories of complaint which local authorities have responsibility for:

- admission to schools (except in Voluntary Aided Schools);
- statutory assessment of special educational needs;
- exclusion of pupils from schools;
- child protection/allegations of child abuse;;
- complaints about the action of the Governing Body; and
- school transport.

The Local Offer will make clear whether a particular local authority offers this service.

The Local Government Ombudsman provides ["top tips"](#) for making a complaint to a local authority on its website.

## Local Government Ombudsman

The Local Government Ombudsman (LGO) can investigate complaints against local authorities where the complaint has not been resolved through the local authority's complaints procedure. The LGO investigates the process by which local authority decisions were made and whether there has been maladministration, rather than examining the merits of a decision which has been properly taken. The LGO will decide whether there has been a significant injustice to the complainant and/or there is evidence of maladministration. Maladministration can include delay, failure to take action and failure to follow procedures.

The LGO does not investigate matters which can be appealed to the First-tier Tribunal (SEND), such as a decision not to carry out an assessment (see section 7.5). The LGO can investigate complaints that the special educational provision set out in plans is not being delivered and, in doing so, can investigate what part the school may have played in the provision not being delivered. (The LGO cannot, otherwise, investigate complaints about schools' SEN provision and has no powers to make recommendations to a school.) In association with the Parliamentary and Health Service Ombudsman, the LGO can also investigate complaints about the delivery of health provision set out in plans.

Complaints can be made to the Local Government Ombudsman via its [website](#). Help in making complaints is available on this number: **0300 061 0614**.

Alternatively complaints can be made in writing to the following address:

PO Box 4771  
Coventry  
CV4 0EH

If the LGO finds evidence of fault in the way a decision has been made, it will generally ask the local authority to reconsider the decision and consider if other remedies are available. Where there is evidence of systemic failings, LGO recommendations could include review of systems, policy and procedures. In addition, if during the course of an investigation the LGO identifies other children who are similarly affected they can widen the scope of their investigation to include them.

The LGO cannot make local authorities carry out its recommendations following investigation of a complaint but in practice authorities almost always do so.

## Complaints to the Secretary of State

If disagreements have not been resolved at the local level, complaints can be made to the Secretary of State that either the governing body of a maintained school or a local authority has acted unreasonably or has failed to carry out one of its duties under the Education Acts, including their SEN duties.

Unreasonableness has been defined by the Courts as acting in a way in which no reasonable governing body or local authority would have acted in the circumstances.

The Secretary of State can issue directions about the exercise of a power or the performance of a duty by the governing body of a maintained school or a local authority. Any directions the Secretary of State issues **must** be 'expedient' – that is, the direction can make a material difference in remedying the matter. The Secretary of State would not intervene in a case where there is another avenue of redress, such as the First-tier Tribunal (SEND).

## 9.5 Mediation

### Mediation information and advice

Parents and young people who wish to make an SEN appeal to the First-tier Tribunal (SEND) may only do so after they have contacted an independent mediation adviser and discussed whether mediation might be a suitable way of resolving the disagreement. Mediation aims to enable disagreements to be disposed of more amicably and quickly than the appeal.

These mediation arrangements complement but are distinct from the disagreement resolution arrangements set out in 9.3. The disagreement resolution arrangements are designed to resolve disagreements about a) the performance of duties and b) SEN provision and are voluntary for both parties. The mediation arrangements are to provide an opportunity to resolve disagreements before an appeal to the Tribunal.

Parents and young people **must** consider mediation before registering an appeal and if they want to go to mediation local authorities **must** attend.

The matters which can be appealed are set out in the section on appeals below. Engagement with the mediation and appeal processes does not prevent parents, young people and local authorities from making use of the disagreement resolution arrangements at the same time if the parties are in agreement to do so.

Local authorities **must** set out the arrangements they have made for securing mediation information services and mediation itself before an appeal to the Tribunal in the local offer.

## Process

When the local authority makes a decision in relation to a matter which can be appealed to the Tribunal they **must** include, with the decision, a notice informing the parent or young person of contact details for at least one independent mediation adviser. If the parent or young person wants to appeal they **must** contact a mediation adviser, within two months, which may be that mediation adviser or another of their choice.

The adviser will provide information on mediation and answer any questions which the parent or young person may have. The information will normally be provided on the telephone, although information can be provided in written form, through face-to-face meetings or through other means if the parent or young person prefers that.

Once the information has been provided it is for the parent or young person to decide whether they want to go to mediation. Where the parent or young person decides not to go to mediation following contact with the mediation adviser the adviser will issue a certificate, within three working days, confirming that information has been provided. The certificate will enable the parent or young person to lodge their appeal, within one month of receiving the certificate.

Parents and young people are not able to register an appeal at the Tribunal without a certificate.

## Exceptions to the requirement to contact a mediation adviser

Parents and young people do not have to contact the mediation adviser prior to registering their appeal with the First-tier Tribunal if their appeal is solely about the name of the school or other institution named on the plan, the type of school or other institution specified in the plan or the fact that no school or other institution is named. Parents and young people will already have had the opportunity to request a school or other institution and to discuss this in detail with the local authority. The dispute resolution arrangements, as set out in 7.3, would be available if parents or young people and local authorities wanted to attempt to resolve the dispute about the placement making use of these arrangements.

The mediation information and advice arrangements do not apply to disability discrimination claims.

## Going to mediation

If the parent or young person decides to proceed with mediation then the mediation adviser will contact the local authority and the local authority **must** ensure that a mediation session takes place within 30 calendar days, although it may delegate the arrangement of the session to the mediator.

If the parent or young person wants to go to mediation then the local authority **must** also take part. If the local authority is unable to arrange mediation within 30 days it **must** tell the mediator. The mediation adviser **must** then issue a certificate within three days. On receipt of the certificate the parent or young person could decide whether to appeal immediately or to wait for mediation to take place. If the parent or young person initially indicates that they want to go to mediation but change their mind they can contact the mediation adviser who can then issue a certificate with which an appeal can be registered.

A mediation session or sessions which arise out of these arrangements **must** be conducted by independent mediators. Once mediation is completed the mediation adviser **must** issue a certificate within three working days confirming that it has concluded. If the parent or young person still wants to appeal following the mediation they **must** send the certificate to the Tribunal when they register their appeal.

Parents and young people have one month from receiving the certificate to register an appeal with the Tribunal. The certificate will not set out any details about what happened in the mediation – it will simply state the mediation was completed at a given date. When cases are registered with the Tribunal following mediation the Tribunal will deal with the appeal on the facts of the case. The Tribunal may cover similar ground to that explored in the mediation but will reach its own independent findings and conclusions.

## Effective services for mediation and mediation information and advice

Local authorities **must** make arrangements for parents and young people to receive information about mediation so that they can take part in mediation if they so choose, before registering an appeal with the Tribunal.

Local authorities are free to choose how they make these arrangements, whether that is by contracting a mediation provider or otherwise. Any mediation provision – by a mediation adviser (providing information) or mediator (conducting mediation) - **must** be independent of the local authority. No one who is directly employed by a local authority can provide information about mediation or act as a mediator. Local

authorities who contract mediation providers should contract mediation providers who employ accredited mediators.

### **Mediation information**

The mediation information which is given to parents and young people should be factual and unbiased and should not seek to pressure them into going to mediation. Where there is more than one available, the mediation adviser should not try to persuade the parents or young people to use any particular mediator.

The mediation adviser should be ready to answer any questions from the parent or young person and explain that mediation is an informal, non-legalistic, dispute settlement process run by a trained third party and designed to bring two parties together to clarify the issues, and reach a resolution. The mediation adviser should make clear that the parent or young person's use of mediation is voluntary, and should explain the timescales which must be met, the certificate and any costs which can be reimbursed to the parent or young person. The local authority will pay reasonable travel expenses and other expenses to the parent or young person taking part in mediation.

### **Mediation**

A mediation session should be arranged, in discussion with the parents or young people, at a place and a time which is convenient for the parties to the dispute.

The mediator may play a key role in clarifying the nature of the dispute and ensuring that both sides are ready for the mediation session. The mediator should agree with the parties on who needs to be there.

The local authority representative(s) should have the authority to be able to make decisions during the mediation session. The parent or young person may be accompanied by a friend, adviser or advocate and, in the case of parents, the child where the parent and the mediator agree. In cases where parents are the party to the mediation and it is not appropriate for the child to attend in person the mediator should take reasonable steps to get the views of the child. Young people with learning difficulties, in particular, may need advocacy support when taking part in mediation. Generally, legal representation should not be necessary at the mediation, but this will be a matter for the parties and the mediator to agree. If either party does have legal representation they will have to pay for it themselves.

Mediators should have undertaken mediation training and should have an understanding of SEN processes, procedures and legislation.

## **Registering an appeal with the Tribunal**

Parents and young people have two months to register an SEN appeal with the Tribunal, from the date of receiving a notice from the local authority containing a decision which can be appealed. In some cases parents and young people will not be in a position to register the appeal within the two month limit. The Tribunal has the power to accept appeals outside the two month time limit.

The Tribunal will not take account of the fact that mediation has taken place, or has not been taken up, nor will it take into account the outcome of any mediation.

## **9.6 Parents' and young people's right to appeal to the First-tier Tribunal (SEND) about EHC assessments and Education, Health and Care Plans**

### **The First-tier Tribunal (SEND)**

The Special Educational Needs and Disability Tribunal (the SEND Tribunal) forms part of the First-tier Tribunal (Health, Education and Social Care Chamber). Tribunals are overseen by Her Majesty's Courts and Tribunals Service.

### **The role and function of the Tribunal**

The SEND Tribunal hears appeals against decisions made by the local authorities in England in relation to children's and young people's assessments and Education, Health and Care plans. It also hears disability discrimination claims against schools and against LAs when carrying out some of their education functions.

The Tribunal seeks to ensure that the process of appealing is as user-friendly as possible, and to avoid hearings that are overly legalistic or technical. It has always been the Tribunal's aim to ensure that a parent or young person should not need to engage legal representation when appealing a decision.

### **Who can appeal to the Tribunal about EHC assessments and plans**

Parents and young people (over compulsory school age until the end of the academic year in which they reach age 25), can appeal to the SEND Tribunal about EHC assessments and EHC plans, following contact with a mediation adviser in most cases (see above).

## What parents and young people can appeal about

Parents and young people can appeal to the Tribunal about:

- a decision by a local authority not to carry out an EHC needs assessment or re-assessment;
- a decision by a local authority that it is not necessary to issue an EHC plan following an assessment;
- the description of a child or young person's SEN specified in a plan, the special educational provision specified, the school or other institution or type of school or other institution (such as mainstream school/college) specified in the plan or that no school or other institution is specified;
- an amendment to these elements of the plan;
- a decision by a local authority not to amend an EHC plan following a review or re-assessment;
- a decision by a local authority to cease to maintain a plan.

Routes of redress for parents and young people who are unhappy with decisions about health and social care set out in EHC plans are through health and social care complaints procedures – set out below.

## Conditions related to appeals

The following conditions apply to appeals:

- the parent or young person can appeal to the Tribunal when the EHC plan is initially finalised, following an amendment or a replacement of the plan;
- appeals **must** be registered with the Tribunal within two months of the local authority sending a notice to the parent or young person of the decision about one of the matters that can be appealed to the Tribunal or within one month of a certificate being issued following mediation;
- the right to appeal a refusal of an assessment will only be triggered where the local authority has not carried out an assessment in the previous six months;
- when the parent or young person is appealing about a decision to cease to maintain the plan the local authority has to maintain the plan until the Tribunal's decision is made.



## Decisions the Tribunal can make

The Tribunal has prescribed powers under the Children and Families Bill to make certain decisions in relation to appeals. The Tribunal can dismiss the appeal, order the local authority to carry out an assessment, or to make and maintain a plan, or to maintain a plan with amendments. The Tribunal can also order the LA to reconsider or correct a weakness in the plan. Local authorities have time limits within which to comply with decisions of the Tribunal. These are set out in the draft Special Educational Needs (Appeals) regulations.

## 9.7 Disability discrimination claims

The parents of disabled children and disabled young people in school have the right to make disability discrimination claims to the First-tier Tribunal (SEND) if they feel their children or the young people themselves have been discriminated against by schools or local authorities when carrying out some of their education functions. Claims **must** be made within six months of the alleged instance of discrimination. The parents of disabled children, on behalf of their children, and disabled young people in school can make a claim against any school about alleged discrimination in the matters of exclusions, the provision of education and associated services and the making of reasonable adjustments, including the provision of auxiliary aids and services. They can also make claims to the Tribunal about admissions to independent and non-maintained special schools and most academies. Claims about admissions to maintained schools are made to local admissions panels.

Disability discrimination claims by young people against post-16 institutions, and by parents about early years provision and about their treatment as a parent in being provided with an education service for their child, are made to the county courts.

Guidance on how to make a disability discrimination claim to the Tribunal is available at the [Ministry of Justice](#) website

### Exclusion

The Government issues statutory guidance on school exclusion, which can be found on the [Department for Education's website](#).

The guidance sets out details of the permanent exclusion review panel process, including parents' right to ask for an SEN expert to attend. In addition, claims for disability discrimination in relation to permanent and fixed-period exclusions may be made to the First-tier Tribunal (SEND).

Local authorities have a duty to arrange suitable, full-time education for pupils of compulsory school age who would not otherwise receive such education, including from the sixth day of a permanent exclusion. Schools have a duty to arrange suitable, full-time education from the sixth day of a fixed period exclusion. In carrying out their duties schools and local authorities **must** ensure that this education is in line with a pupil's Education, Health and Care plan, if one is in place.

## 9.8 Appeals

### How to appeal

When appealing to the Tribunal parents and young people should identify the decision that they are appealing against and the date when the local authority's decision was made. The parent or young person who is appealing (the appellant) will be required to give the reasons why they are appealing. The reasons do not have to be lengthy or written in legal language but should explain why the appellant disagrees with the decision. If there is any information or evidence which supports the appeal, the appellant should include it when they submit their appeal form.

When the appeal is registered with the Tribunal a copy will be sent to the local authority. The local authority will also receive details of the time limits for sending documents or providing details of witnesses; these will apply to all parties. Once the appellant's case is fully prepared they will receive a date for the hearing. Hearings are heard throughout the country at Her Majesty's Courts and Tribunals Service buildings. The Tribunal will try to hold hearings as close to where the appellant lives as possible. Appeals are heard by a judge and a panel of Tribunal members who have been appointed because of their knowledge and experience of children with SEN and disabilities.

A video is available at the [Ministry of Justice's website](#), which gives appellants some guidance on what happens at a hearing. A DVD of this video can be requested from the Tribunal by writing to:

First-tier Tribunal (Special Educational Needs and Disability)  
Mowden Hall  
Staindrop Road  
Darlington  
DL3 9BG

## Timescales following the hearing

Both the young person or parent making the appeal and the local authority should receive a copy of the Tribunal's decision and reasons by post within 10 working days of the hearing. Along with the decision notice the Tribunal will send a leaflet which will explain the application process for permission to appeal the Tribunal decision to the Upper Tribunal, if the appellant considers that the decision made was wrong in law or based on an error in fact.

Step-by-step guidance on the process of appealing to the Tribunal and what it involves can be found at the [Ministry of Justice's website](#).

## 9.9 Legal Aid

If a parent or young person has decided to appeal against a decision concerning SEN provision for their child, legal aid may be available to assist with that appeal. Legal aid can fund legal advice and assistance in preparing an appeal to the First-tier Tribunal, but not representation at the Tribunal.

Before someone can be granted legal aid they must pass a financial means assessment. The case must also satisfy a merits test of whether it has a reasonable chance of succeeding.

If the parent or young person's appeal to the Tribunal is unsuccessful, and they wish to mount a further appeal to the Upper Tribunal (or beyond to the Court of Appeal or Supreme Court), then legal aid can provide advice, assistance and representation, subject to the means and merits tests being met.

A parent or young person seeking access to legal aid for a SEN case should go to the [GOV.UK website](#) to find out if they are eligible or contact the Civil Legal Advice (CLA) service on **0845 345 4 345**. If a person is eligible, the CLA will provide legal advice, normally by phone, online or by post unless the specialist advice provider assesses them as unsuitable to have advice in this way.

The following groups do not have to apply via CLA (they can seek advice directly from a face- to-face provider):

- young people under 18; and
- those assessed by the CLA in the previous 12 months as requiring face-to-face advice, who have a further linked problem, and are seeking further help from the same face-to-face provider.

## 9.10 NHS Complaints – Healthwatch

The NHS complaints procedures apply to the health services which a child or young person receives under an Education, Health and Care plan. A complaint may be made to a provider (for example, the NHS Hospital Trust), where there are concerns about the nature of a service provided, or to the CCG, where there is a concern about the way in which a service is commissioned or provided, and this might include concerns about the appropriateness of the services in a plan.

Local Healthwatch has a statutory role to provide patients with advice, and provides an alternative route by which a patient or their family can raise concerns about the commissioning or provision of a service, and receive advice on how to take forward a complaint, or resolve an issue (local Healthwatch may also notify Healthwatch England of concerns which need to be considered at a national level). Contact details for local Healthwatch are available on the Healthwatch for England [website](#) and should also be available with the local offer.

Each CCG is likely to provide a liaison service for patients and their families. Just as the arrangements for commissioning services for SEN integrate the contributions of education, health and care; so the local authority and CCG should consider integrating their arrangements for providing patient advice, liaison and complaints handling. Support in making a complaint about health services can also be provided by NHS Complaints Advocacy via their [website](#).

If a complainant is dissatisfied with the way in which the NHS has dealt with their complaint, they can contact the Parliamentary and Health Service Ombudsman provided the NHS has first had a chance to resolve it. In line with the Ombudsman's Principles of Good Administration, in considering a complaint in relation to health services in an Education, Health and Care Plan, the Ombudsman will take into account this Code of Practice, and relevant legislation. The Ombudsman may also undertake a joint investigation with the Local Government Ombudsman.

## 9.11 Complaints about social services provision

The Children Act 1989 places a duty on children's social care services to safeguard and protect children. Someone who is unhappy with the way in which they or their family has been treated by these services has the right to make a formal complaint under the 'Local Authority Complaints Procedure'. They can write to either the Director of Children's Services or the Designated Complaints Officer for the local authority concerned. The authority **must** then consider the complaint, appointing at least one person independent of the local authority to take part in dealing with the issues raised and provide the complainant with a written response within 28 days.

**- DRAFT FOR CONSULTATION -**

If the complainant is unhappy with the authority's response, they can request a panel hearing by writing to the authority within 28 days of the response. The panel should be chaired by an independent person. If the complainant remains dissatisfied with the handling of their complaint under the local procedures and they think a local authority has treated them unfairly as a result of bad or inefficient management ("maladministration"); and that this has caused them injustice (such as loss, injury or upset), they can refer their complaint to the Local Government Ombudsman (LGO). See "Local Government Ombudsman" above.

Young people of 18 and over can complain under regulations which prescribe:

- (i) a procedure before investigation;
- (ii) and (iii) an investigation and response process.

The provider **must** acknowledge the complaint within three days and they must offer the complainant the opportunity to discuss the timing and procedure for resolving the complaint. Once that has been agreed, the complaint **must** be investigated and, as soon as possible after completing the investigation, a written report **must** be sent to the complainant explaining how the complaint has been considered, the conclusions of the report and any remedial action which has been taken or is proposed to be taken.

A complainant who is dissatisfied with the outcome of this process can also take their case to the Local Government Ombudsman.



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Reference: DFE-00205-2013