

Special educational needs and disability (SEND)

The **definition of SEND** is clearly stated in law and guidance from the DfE (SEND Code of Practice 2015).

A child or young person has special educational needs if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.

Special educational provision is defined as provision that is different from or additional to that normally available to pupils of the same age.

A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- **has a significantly greater difficulty in learning than the majority of others of the same age, or**
- **has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions**

For a child under 2, **any** educational provision is deemed to be special education.

Many children and young people who have SEN may have a **disability** under the **Equality Act 2010** – that is '**a physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities**'.

This definition provides a relatively low threshold and includes more children than many realise.

This definition includes **sensory impairments** such as those affecting sight or hearing, and long-term health conditions such as asthma, diabetes, epilepsy, and cancer.

Children and young people with such conditions do not necessarily have SEND, but there is a significant overlap between disabled children and young people and those with SEND.

Where a disabled child or young person requires special educational provision, this will also be covered by the SEND definition.

EHCPs can be available to those aged from 0-25 – while still involved in education or training (though not at university level).

Not all children with SEND will require an Education Health and Care Plan (EHCP).

Nationally and locally around **4%** of pupils have an EHCP, while around **17%** of all pupils have SEND, having their needs are met from resources already available within the educational placement.

Areas of SEND

The SEND Code of Practice (2015) identifies the main areas covered by the definition of special educational needs and disability.

Communication and interaction

Children and young people with speech, language and communication needs have difficulty in communicating with others.

This may be because they have difficulty saying what they want to; understanding what is being said to them; or not being able to understand or effectively use social rules of communication.

Children and young people with Autism are likely to have particular difficulties with social interaction. These children may also experience difficulties with language, communication and imagination, which can impact on how they relate to others.

Cognition and learning

Support for learning difficulties may be required when children and young people struggle in class or learn at a slower pace than their peers, even with appropriate differentiation.

Learning difficulties cover a wide range of needs, including:

- moderate learning difficulties (MLD)
- severe learning difficulties (SLD), where children and young people are likely to need support in all areas of the curriculum and associated difficulties with mobility and communication
- profound and multiple learning difficulties (PMLD), where children are likely to have severe and complex learning difficulties as well as a physical disability or sensory impairment.

Specific learning difficulties (SpLD), affect one or more specific aspects of learning.

This encompasses a range of conditions such as dyslexia, dyscalculia and dyspraxia.

Social, emotional and mental health difficulties

Children and young people may experience a wide range of social and emotional difficulties which can show in many ways.

These may include becoming withdrawn or isolated, as well as displaying challenging, disruptive or disturbing behaviour.

These behaviours may reflect underlying mental health difficulties such as anxiety or depression, self-harming, substance misuse, eating disorders or physical symptoms that are medically unexplained.

Other children and young people may have diagnoses such as Attention Deficit Disorder, Attention Deficit Hyperactive Disorder, Pathological Demand Avoidance or Attachment Disorder. Schools and colleges should

have clear processes to support children and young people, including how they will manage the effect of any disruptive behaviour so it does not adversely affect other pupils, as well as supporting the needs of the individuals with such needs.

Sensory and / or physical need

Some children and young people require special educational provision because they have a disability which prevents or hinders them from making use of the educational facilities generally provided.

These difficulties can be age related and may fluctuate over time.

Many children and young people with vision impairment (VI), hearing impairment (HI) or a multi-sensory impairment (MSI - a combination of vision and hearing difficulties) will require specialist support and/or equipment to access their learning, or habilitation support.

Some children and young people with a physical disability (PD) require additional ongoing support and equipment to access all opportunities available to their peer, which can include mobility aids, and specific health related interventions, for instance related to feeding or continence.

It should be noted that some assessments undertaken, and interventions recommended that relate to the above areas of need may be the responsibility of health professionals (e.g. Speech and Language Therapists, Occupational Therapists, CAMHS). If the interventions recommended are viewed as *educating or training* a child or young person, then they are viewed as **educational provision**.

SEND Support and School Funding

The majority of pupils and students with SEND do not require an Education Health and Care Plan (EHCP).

This is because the additional needs of those children and young people are being appropriately addressed with relatively low levels of support, funded through resources already available within the educational placement.

Funding available to meet these needs can, however, seem a little complicated.

For example, schools receive a level of funding for ALL pupils - this is known as Core Funding (sometimes still referred to as Age Weighted Pupil Unit).

This is expected to meet the costs of mainstream education.

In addition, all maintained* schools receive a **Notional SEN Budget** from which to fund most of the special educational provision that pupils require.

From this budget schools are expected to pay for the first **£6,000** of special educational provision each year for an individual pupil.

This is generally used to fund additional provision in terms of special equipment, Teaching Assistant support, some small group or individual work and some therapeutic interventions.

*(*maintained schools means any LA school, or any Academy school or free school)*

If the LA decides that an EHCP is not necessary, then a **SEND Support Plan** should be made available, which sets out the range of special educational needs identified by the Assessment, as well the provision required to meet those needs.

The SEND Support Plan carries no legal weight and is not the equivalent of an EHCP.

Ideally, the SEND Support Plan should be sent with the decision letter so that an informed decision can be made as to why an EHCP is regarded as not being necessary. If a decision is explained in detail, with relevant evidence made available, it may help to avoid an appeal.

One of the factors in deciding if a pupil requires an EHCP will be how much the additional provision is expected to cost.

If it can be shown that the required provision is likely to cost significantly less than £6000 this may be a reason not to issue an EHCP.

It is, therefore, crucial that if a LA thinks that an EHCP is not necessary, any SEND Support Plan is detailed and can be accurately costed.

Schools can also access Pupil Premium funding for certain groups of children – this includes those entitled to free school meals; looked-after children; children of armed forces parents.

This can involve support for pupils with SEND if they are eligible for the Pupil Premium.

Education Health and Care needs Assessment Process

Requests for EHC (Education, Health and Care) needs assessments can be made by parents or carers, young people with SEND, schools or other education providers and some professionals such as Educational Psychologists, Health Visitors etc.

There can be confusion around the assessment criteria (the legal tests) that must be applied.

These are that a child or young person:

- 1. HAS or MAY HAVE special educational needs or a disability and**
- 2. MAY REQUIRE additional support through an EHC Plan.**

Evidence could be a diagnosis of Autism or ADHD, a physical disability or sensory impairment, a report from a Speech Therapist indicating that a child has a significant communication difficulty, a dyslexia assessment or evidence from school that attainment is well below age related expectations.

There is no need for any additional criteria to be added, and any reference, for example, in LA published assessment criteria to such needs having to be 'severe' or 'complex' are not part of the legal definitions

In some cases, it is important to seek an EHC needs assessment as soon as possible in nursery or school provision.

In other cases, it is advisable to allow teaching and advisory staff to suggest additional provision and then review how effective it has been. This is called the '**graduated approach**'.

There are usually application forms available on the LA Local Offer websites, but it is also possible to make a request in the form of a letter.

The more evidence that can be provided with this request, the better chance there is of a well-informed decision being made by the LA, and assessment being agreed.

If a request is made for EHC Needs Assessment, **a decision has to be made within six weeks** on whether to agree to or refuse this request.

It is possible to Appeal against such a decision.

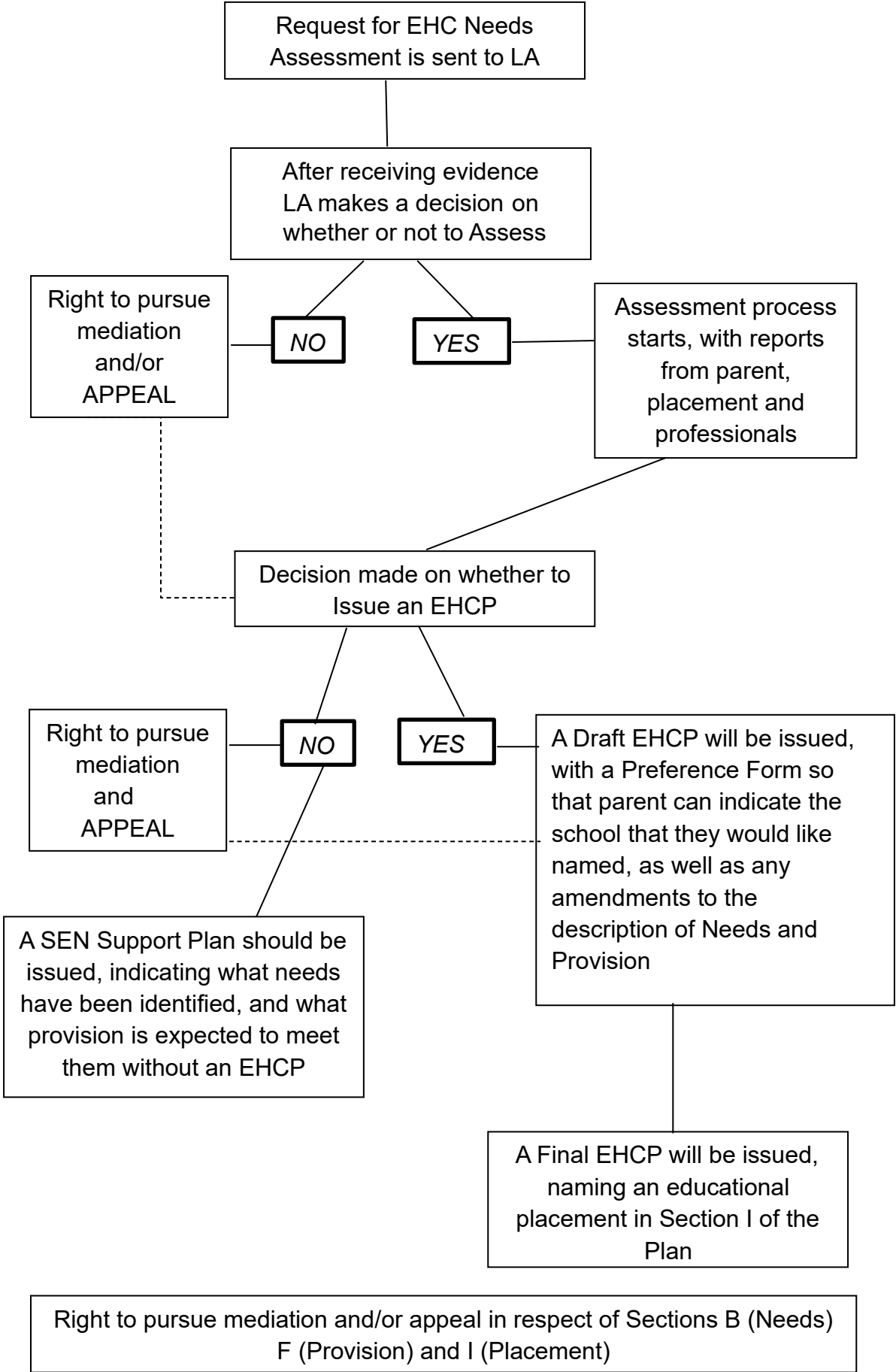
If a request for an EHC needs assessment is refused, it is also possible to make another request for assessment – for example, if you have an updated report or a letter from a health professional – without having to wait for any specific length of time.

START

WEEK 6

WEEK 16

WEEK 20



Decisions on issuing an EHCP

The law around when an EHCP should be issued is less clear than that dealing with assessment.

Legislation states that an EHCP should be issued when it is 'necessary'.

Case law has not clarified this in any great detail, beyond stating that necessary means something between 'useful and essential'.

An important factor is what provision is normally available within mainstream schools.

This is when available funding can be considered.

If an EHC Needs Assessment request is agreed, the LA has a further 10 weeks by which time a decision must be made either to issue a *Draft EHCP*, or to decide that *no EHCP will be issued*.

Such a decision should be based on all of the evidence submitted in support of the Assessment request, as well as the reports commissioned by or otherwise submitted to the LA; this must include any prepared by independent professionals.

If a Draft EHCP is issued, there should be an opportunity to comment on and discuss with the LA the content of any of the Sections.

It is always worth comparing the content of the EHCP with the reports that were used to inform the assessment, to ensure that the relevant Sections include all diagnoses, assessment outcomes and recommendations of strategies and interventions to be provided. Any recommendations from an independent professional (e.g. a private Speech and Language Therapist) must be considered and should be included – in the event of there being conflicting recommendations from similarly qualified professionals, then a decision can be made which advice to include.

It is at this point that a preference can be indicated for the type and name of educational placement that a parent / carer or young person wants named. The LA must then consult with those placements, and can also consult with placements that it considers appropriate.

If a decision is made not to issue an EHCP, there is a right of appeal. There is a *mediation process* which has to be considered before an appeal can be made to SENDIST.

Where a decision has been made not to issue an EHCP, further requests for assessments are disallowed for a period of six months from that decision date (including any decision confirmed by a Tribunal).

Education, Health & Care Plans

An Education Health and Care Plan (**EHCP**) is a legal document which is expected to describe the needs of the child or young person, detail the provision and name an educational placement for a child or young person.

While it is a legal document, it is expected that an EHCP should be written in a way that is *clear, concise, understandable and accessible to parents, children, young people, providers and practitioners*.

Each local authority can design their own format for an EHCP but it must include specific sections:

Section A - My Story This is background information and is written by the child and parents / carers, young person and should include all the views of the family. Any input from professionals should be indicated as such.

Section B - Special Educational Needs This section describes all identified needs under 4 headings: Communication & Interaction, Cognition & Learning, Social, Emotional & Mental Health, Physical and Sensory Needs. The strengths and skills of the child or young person may also be mentioned here.

Section C - Health needs. This section must specify all the health needs identified through the EHC needs assessment which relate to the child or young person's SEND. The Integrated Care Board (ICB) can specify other health care needs which are not related to SEN but need management in a special educational setting (e.g. incontinence). Health needs not related to the child's SEND should also be included in this section unless there is good reason not to include them.

Section D - Social Care needs This section contains the child or young person's social care needs which relate to their SEN or to a disability. The local authority (LA) must gather information from relevant professionals about care needs. It may also choose to specify other social care need not linked to the SEN or disability. Whether social care needs relate to the SEN or disability will be decided after the EHC assessment, subject to legal requirements guidance and LA policy. The LA will use the evidence gathered during assessment to decide whether the child or young person has needs under:

- The Chronically Sick and Disabled Persons Act 1970 (CSDPA)
- The Children Act 1989
- The Care Act 2014 (for a young person over 18)

A **Child In Need** is defined under the Children Act 1989 as a child who is unlikely to achieve or maintain a reasonable level of health or development, or whose health or development is likely to be significantly or further impaired, without the provision of services; or a child who is disabled.

Section E - Outcomes These are divided into the same for headings as used in Section B and should include both short-term (within the next 12 months) and long-term (by the end of the next key stage) outcomes.

Outcomes are expected to be SMART (Specific, Measurable, Achievable, Realistic, Time-related.)

Section F - Special Educational Provision This section should clearly describe all of the additional support, therapies and resources that have been identified to meet the needs listed in Section B. The Code of Practice expects any provision to be *specified* and *quantified* so that it is clear what additional support and resources are required to meet needs.

It is expected that this Section includes details such as:

- The qualifications and experience of staff who will be teaching and supporting
- If small group work is required, the size of that group, and length and frequency of sessions
- Any need for 1-1 work
- Input from other professionals (e.g. Speech and Language Therapy)

Section G - Health provision This may include medical treatments, nursing support, assistance with taking medication, wheelchair support etc. Some provision that is arranged through health professionals (Physiotherapy, Occupational Therapy or Speech and Language Therapy) will usually be seen as educational and so should be in Section F.

Section H1 - Social Care provision This refers to any social care social care provision which must be made for a child/young person under 18 resulting from Section 2 of the Chronically Sick and Disabled Persons Act 1970 (CSPDA)

Provision under CSPDA could include:

- Support at home e.g. personal care
- Support to access community
- Community based short breaks
- Travel assistance in the community
- Home adaptations
- Help with holidays costs

If a need, identified during assessment, can be met through these types of services the Local Authority (LA) must decide if it is necessary for them to meet this need. They must take account of family circumstances and the needs of other children in the family. If identified as necessary, support must be provided.

Section H2 - Social Care provision Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEND. This will include any adult social care provision being provided to meet a young person's eligible needs (through a statutory care and support plan) under the Care Act 2014 or provision not covered by CSPDA.

This could include provision identified through

- Early Help
- Child in Need Assessment
- Safeguarding Assessment

For children and young people under 18 it includes:

- Residential short breaks
- Services linked to SEN but not to disability

If social care needs have been identified in Section D but the LA does not consider there is a duty to meet these needs under the CSPDA those needs should be included in this section. If a young person over 18 has support through an Adult Care and Support Plan, this should be incorporated into this section of the EHC Plan. Social care provision identified in this section will be anything that is 'reasonably required' subject to cost and practicality. For a child in Year 9 and above any provision required to assist their preparation for adulthood and independent living must be included in this section.

This includes:

- Finding employment
- Housing
- Participation in society

All social care provision specified must facilitate 'best possible' social care outcomes.

Section I - Placement This should set out the **type** and the **name** of the educational establishment where the special educational provision is to be made.

Section J - Personal Budget Any provision that is made via such a budget, rather than through the educational placement, is noted here.

Section K - Appendices All reports obtained to inform the first EHCP, and then later reports and Annual Review reports will be listed here.

If dissatisfied with the content of the EHCP – and any concerns cannot be easily resolved – then there is a right of Appeal – although this only relates to the contents of **Sections B, F and I**.

Any appeal on educational grounds, can include a request for recommendations in the Health and Social Care sections also.

Naming a placement in the EHCP

The law regarding the educational placement to be attended by the child or young person is not complicated, but is often an area of dispute.

On receipt of the Draft EHCP, there is an opportunity to express a preference for a type of and the name of an educational placement.

For those of school age, this could be a mainstream school, a Resource Base within a mainstream school, a special school or possibly an independent school.

For early years children this could be a nursery provider or a special school.

For young people this could be a FE College, a specialist college, a training provider or an apprenticeship.

The LA must comply with that preference unless:

- **the placement is unsuitable.**
- **admitting the child or young person would be incompatible with the efficient education of others with whom s/he would be taught.**
- **admitting the child or young person would be incompatible with the efficient use of resources.**

There is a legal presumption for mainstream education.

If the preference is for a mainstream placement, then this cannot be refused on the grounds of resources and is highly unlikely to be refused on the grounds of suitability.

If a special school is preferred, then all the criteria above will be considered. If a preference for a specific special school is made, it must be suitable/appropriate for the child's needs.

The LA must consult with the preferred school(s) but can consult with others deemed to be suitable.

If the preferred school is agreed to be suitable/appropriate, it may be the case that the school is said to be 'full'. The relevant criterion is that of *'incompatibility with the efficient education of other pupils.'*

The LA – and if necessary, subsequently a Tribunal – will consider the situation as to whether admitting an additional child would lead to the inefficient education of others. The needs and behaviour of existing pupils, the physical dimensions of teaching areas and access to resources can be relevant factors, although consideration should also be given to steps that could be taken to overcome any barriers to admitting the pupil. An assertion alone that the school is 'full' is insufficient to establish 'incompatibility'.

If an independent school is preferred, it is likely that resources will be a significant factor, as the LA is likely to choose a less costly, suitable school instead.

There is no legal criterion regarding educational placements being *local* to the home address. *Distance* from home to education is not taken into account. However, the *cost* of any home-to-school transport that may be required can be considered if looking at the efficient use of resources.

Types of educational placement

Maintained placements :

This term applies to all the different types schools and other placements that are funded and controlled by Local Authorities:

- mainstream schools
- (most) grammar schools
- special schools
- nurseries
- Pupil Referral Units
- FE colleges

Other school systems – such as **Academies** and **Free Schools** – are also classified as maintained, even though they are funded and controlled by the Secretary of State rather than the LA. They are subject to the same law and guidance, in relation to SEND issues, as LA maintained schools.

Special school:

This is defined as a school which is **specialised to make special educational provision for pupils with SEN**.

EHCPs are required for placement (although assessment placements can be agreed by the LA in certain circumstances).

Mainstream school:

This is a school which is **not a special school** and is either a LA maintained school or an Academy school.

Resource Base:

Placements at Resource Bases or Additionally Resourced Centres are usually situated in mainstream schools and, even if an EHCP is required for placement, are still **mainstream** placements.

Independent schools:

These are usually operated by charitable organisations but can be privately run. Even in the case of independent special schools, they are classified as independent rather than special schools.

Some independent schools are referred to as **Section 41 schools**; these are approved by the Secretary of State and can be requested by parents and named by LAs or Tribunals in the same way that maintained schools can be.