



# Education, Health and Care Assessments & Plans: **Getting Your Child the Right Support**

**Advice for Parents,  
Carers and Young People**

Produced by Birkett Long Solicitors  
[birkettlong.co.uk](http://birkettlong.co.uk)

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## When Your Child Needs More Support

As a parent, you want the best possible support for your child, to enable them to thrive and achieve their full potential.

But what if you feel their needs are not being met by their nursery, school or college? What if they require more SEN support than is being provided?

It may be that you need to ask for an Education, Health and Care (EHC) assessment.

Getting a local authority to agree to assess your child can sometimes be a challenge in itself.

Even if it does agree, it may decide that your child does not require an Education, Health and Care Plan (EHCP) – a legally binding document that provides a blueprint for their ongoing support and development.

Even if an EHCP is issued, you may not agree with some or all of its contents. Maybe it does not go far enough in setting out the provision needed. It could be that the place of learning named in the EHCP is simply not the right one for them.

It might be that you have an EHCP but a child or young person's needs have changed, but the plan has not been updated to reflect this. Or a plan has been ended suddenly, leaving you anxious about their future development.

If you disagree with a local authority, or you are unhappy with the contents of your child's plan, you may have to consider appealing.

At Birkett Long Solicitors, we help parents get the education, health and social care support their child needs.

We have produced this guide to explain your rights in requesting an EHC assessment, what to expect from the process, and how to ensure an EHCP is legally compliant.

Our specialist team of SEN lawyers are experts at navigating families through this complicated field of law, making successful claims and winning appeals.

**We're ready to get your child the support they deserve.**



# EHC Assessment: Your Rights

## What is an Education, Health and Care (EHC) needs assessment?

An EHC needs assessment is an assessment of a child or young person's educational, health and care needs. It is the first stage of the process to getting an Education, Health and Care Plan.

## What is an Education, Health and Care Plan (EHCP)?

An EHCP is for children and young people (up to the age of 25) who need extra educational support.

It is a legal document that will guide your child's development, setting out their special educational, health care and social care needs.

It also details:

- Extra or specialist support required to meet those needs
- How that support will help them to achieve specific outcomes
- A named nursery, school, or college or type of school they should attend

An EHCP can only be issued by a local authority (LA) once a child or young person has been formally assessed via an EHC needs assessment.

## Who can request an EHC needs assessment and when?

The following people have the right by law to ask for an EHC need assessment for a child or young person aged between 0-25 years:

- A child's parent
- A young person (16-25)
- A person acting on behalf of a school or college (this should be with the agreement of the parent or young person)

If your child has SEN and you do not feel that the nursery, school or college they attend is able to provide the help and support needed, you should ask the LA for an EHC needs assessment.

A young person (16-25) can ask to be assessed themselves, but parents or carers can do this on their behalf if their SEN makes this difficult.

There are only two things an LA has to consider when asked to carry out an assessment:

1. Whether the child or young person has – or may have – SEN
2. Whether it may be necessary for special educational provision to be made through an EHC plan

**If the answer to both is yes, it must assess by law.**



# How to Ask for an EHC Assessment

## Step 1 – Talk to the education setting

Before writing to the LA, speak to the nursery, school or college – the class teacher, SENCo (Special Educational Needs Co-ordinator) and head teacher about your concerns.

They may offer to request an EHC assessment on your behalf with your input and support, but you may prefer to do this yourself and ask them to write a letter supporting your application instead.

## Step 2 – Check the procedure

Your child may attend a school outside the local authority area where you live, but you need to make your request to the LA for the area you live in. Check their website for information on how to make the request for an EHC needs assessment.

## Step 3 – Write to the LA

Set out in writing why you think your child has – or may have – special educational needs, and why they may need special educational provision in accordance with an EHCP (keep a copy of your letter or email).

## Step 4 – Await response

By law, the LA must let you know its decision within 6 weeks – if it fails to do that, you can make a formal complaint and pursue judicial review.

## Step 5 – The decision

If the LA decides to carry out an EHC needs assessment, it will have to approach various parties. *Please see the section: EHC Assessment: What is Involved.*

If it refuses to assess, you can appeal to the Special Educational Needs and Disability Tribunal (SENDIST). *See the section: SENDIST Appeals.*



# EHC Assessment: What is Involved?

## Who takes part?

If it agrees to an EHC needs assessment, the LA must gather information and advice from specific parties on a child or young person's needs, how those needs can be met, and the outcomes that can be expected.

There will be contributions from yourself, your child and professionals in special education needs, health and social care, including (as a minimum):

- An educational representative
- A health care professional
- An educational psychologist
- Social care information and advice
- Any other person the LA thinks is appropriate
- For a child or young person in Year 9 or above, information and advice around preparing for adulthood and independent living
- An education, health or social care representative requested by the child's parent or young person provided it is reasonable, eg. a speech and language therapist if a child may have speech and language needs

## What should the advice and information contain?

It must be:

- Clear, accessible and specific
- Address the child or young person's needs
- Describe the special educational provision required to meet those needs
- List the outcomes the provision aims to achieve

The LA must also consult and take into account the views, feelings and wishes of the child or young person and parents as much as possible. It should make the process easy to understand and minimise disruption for the family while it takes place.

## How long will it take?

Anyone asked to provide information and advice must respond within six weeks.

This is a legal duty, although there may be exceptional circumstances that prevent you being able to meet this deadline, such as being out of the country for a long period during this time.

If a local authority cannot obtain necessary information from one of the professional representatives within the timeframe, they would be expected to seek an independent report in its place.

The LA has 16 weeks to notify a parent or young person of its decision whether or not to issue an EHCP from the date the assessment was requested.

## You can complain if:

- The LA fails to fulfil its legal duties
- You have asked the LA to seek advice from a particular person and it refuses, even though your request was reasonable
- A professional asked for advice provides an inadequate response

**Action:** Write directly to the LA's Director of Children's Services as well as the council's monitoring officer, whose job it is to make sure that the authority is following the law, along with your local ward councillor.

**Further action:** See our guide: *Special Educational Needs (SEN): How to Make a Complaint or Challenge a Decision.*

# When a Decision is Made

## What happens next?

**No:** If the LA decides not to issue an EHCP, it must notify the parent or young person no later than 16 weeks from the date when the assessment was requested. A parent or young person can appeal against the decision to the Special Educational Needs and Disability Tribunal (SENDIST).  
*See the section: SENDIST Appeals.*

**Yes:** If the LA decides to issue an EHCP, it should send you a draft plan by 14 weeks. A final plan must be issued by 20 weeks from the date you asked for an assessment.

## EHC Assessment and Plan Timeline

### 0-6 weeks: Decide on assessment

- Request for EHC assessment
- LA processes application and decides whether or not to assess

### 6-16 weeks: EHC Needs assessment starts

- If agreed, EHC needs assessment starts
- Advice and information is sought from various parties. The LA should decide if it will issue an EHCP by no later than week 16.
- Draft EHCP should be received at week 14 if the LA is going to issue an EHCP and parents, carers and young people have a minimum of 15 days to make representations, attend a meeting with the LA on the draft plan and tell the LA the type of education setting or actual setting they would like named in the EHCP.
- At week 16, the LA must consult with the school/college that a parent, carer or young person has requested. The school or college should respond within 15 days.

### 20 weeks: Final EHCP

- The LA must issue a final EHCP by 20 weeks
- The deadline from the request for an EHC needs assessment responsible to the LA finalising the EHCP is 20 weeks, subject to limited exceptions.

## EHCP: The Draft Plan

Receiving the draft EHCP will provide you with the first opportunity to see the blueprint for your child's health, social care and educational special support and how their development is expected to progress.

It will include information about their needs, what provision there should be to meet each of those, and the outcomes that can be expected. It will also record your child's and your views, feelings and wishes.

It is very important that you check everything carefully.

At this stage, the draft EHCP should not include the name of a nursery, school or college nor the type of education setting – this will only appear in the final plan.

You must be allowed a minimum of 15 days to:

- Comment on the draft EHCP – this is your opportunity to make suggestions or ask for amendments
- Request a meeting with the LA to discuss the draft – it must agree to this
- Ask for a particular school or other education institution to be named in the final plan – the LA must consult with the school (unless it is a wholly independent school)

### Note:

The LA has 20 weeks in total to complete the whole process, from a request for an EHC assessment to issuing the final EHCP, subject to limited exceptions. The draft plan should be issued within 14 weeks to comply with this timeframe.

You can complain if the LA does not stick to these deadlines or seek to commence judicial review. *See our guide: Special Educational Needs (SEN): How to Make a Complaint or Challenge a Decision.*





## EHCP: The Final Plan

A child or young person is legally entitled to SEN provision set out in the final EHCP, which must be issued no later than 20 weeks from the date an EHC assessment is requested, subject to limited exceptions.

It should make clear who is required to do what and when, and how often the plan should be reviewed.

The final plan records the type of education setting or the name of the setting your child will attend. If named, the nursery, school or college must admit your child and put into place the educational provision described in their EHCP.

### What should the final EHCP contain?

Under SEN laws, a final plan should have the following sections: A-K

- A views, interests and aspirations of the child and parent, or young person
- B special educational needs
- C health care needs related to SEN
- D social care needs related to SEN

- E outcomes
- F SEN support required
- G health care provision
- H social care provision required
- I type or name of school or other institution
- J personal budget arrangements (see section on Personal Budgets)
- K advice and information obtained during in EHC needs assessment

If a child or young person is in Year 9 or above, the EHCP must also set out provision needed to prepare for adulthood and living independently.

#### Note:

It is the LA's responsibility to ensure that the support in the EHCP plan is delivered. If it wants to amend provision in any way, it must do based on evidence and in consultation with the parent or young person.

### What if I am unhappy with the contents of an EHCP?

If your child's EHCP does not comply with the law, you can ask your LA to change it – either at the draft or final plan stage, or at an annual review.

You can also ask the LA to reassess your child's needs or carry out an early annual review if there is a sudden change in their needs.

If you still disagree with any of the below, you can appeal to the Special Educational Needs and Disability Tribunal (SENDIST).

**See the section: SENDIST Appeals**

- How your child's SEN is described
- The SEN provision specified
- The name or type of nursery, school or college
- No education setting is named

# How to Enforce your Child's Plan

An EHCP includes sections that are legally enforceable by a parent or young person.

## These include:

### F – SEN provision

The LA has a legal duty to ensure that the special educational support set out in this section is delivered. This means staff at a nursery, school or college have the right financial resources, training and equipment, and any specified therapies or services are provided.

### G – health care provision

The commissioning health body is responsible by law for delivering this part of the plan. This is usually the Integrated Care Board (ICB) for a local health area.

### H – social care provision

This is provided by the LA under the Chronically Sick and Disabled Persons Act 1970 for anyone under 18. For over 18s, it may be provided by the LA's adult services department.

In the case of SEN provision, the LA must also:

- Ensure that support is provided from the date the plan is issued and as specified
- Take responsibility for supporting a child or young person – it cannot pass responsibility onto another body

## Note:

If the LA is not delivering section F of the plan adequately, you should discuss your concerns with your child's teacher and the head teacher first. If this does not solve the problem, complain to your LA following its complaints procedure.

## Action:

If your complaint remains unresolved, you may be able to escalate it to the Local Government and Social Care Ombudsman, or you may need to consider a judicial review. *See our guide: Special Educational Needs (SEN): How to Make a Complaint or Challenge a Decision.*

## Personal Budgets and Direct Payments

Once your child has an EHCP, the LA usually provides the necessary funding to the early years setting, school or college to deliver the support needed.

However, you can ask the LA to consider making a payment to you directly to organise your child's special educational needs provision (or a young person or other nominated person); this is known as a direct payment.

First, the LA must identify a personal budget, which is an estimate of how much it would cost to provide the support specified in the EHCP. It is obliged to do this only when you request it at the draft EHCP stage or when it is reviewing a plan.

You can ask the LA to identify which parts of the personal budget you could receive as a direct payment. Any part of the provision that takes place in an educational setting would need the consent of the head teacher or principal before being replaced by a direct payment.

If the LA refuses a request for a personal budget, it must let the parent or young person know why and provide an opportunity for a formal review.



# Making Changes to an EHCP

As a child or young person develops and their needs evolve, it is likely that their EHCP will need to be changed along the way.

If you move home, too, your child's plan will have to move with you.

By law, an EHCP must be reviewed annually. But what happens if you need to change an existing plan between reviews?

## Annual Review

The first annual review must be completed within 12 months from the time the EHCP was issued.

Annual reviews must then be completed within 12 months of the previous one for a child over five years. For under-fives, the plan must be reviewed at least every three to six months.

You can request a review at any time if you have concerns about your child's progress, support being provided, or their nursery, school or college placement. If your child's SEN needs change significantly, you can ask for a reassessment.

Following an annual review, the LA must decide to either:

- Amend the EHCP
- Leave the plan as it is
- End the plan if it is no longer necessary

The LA must inform the parent or young person of the decision within four weeks of the review meeting taking place. *See our guide: EHCP Annual Review: Checklist for Parents of Children with SEN.*

## What happens if you move?

When a child or young person with an EHCP moves to an area that comes under a different local authority, the plan will transfer to the new LA. This does not happen automatically, so parents should notify the new LA before moving. The plan transfer will happen on the move date or within 15 days of the new local authority becoming aware of the move. It then has six weeks to let the parents or young person know that the EHCP has been transferred and when it will be reviewed.

The new LA has the same legal duties to deliver the EHCP as the issuing authority had.

It cannot, for example, refuse to pay fees for a named independent, non-maintained or boarding school in a plan until it is amended.

It must also arrange for a pupil to attend another appropriate school until it reviews and amends an existing EHCP, if the school named in the plan is too far away for them to continue attending.

The new LA must review the EHCP within 12 months of when it was issued or reviewed, or three months from the date of transfer – whichever is later.

If you move to an area with a different commissioning body for health services that cannot arrange the health care support detailed in the EHCP, it must – within 15 days of becoming aware of the move – ask the LA to carry out a needs assessment or review the existing EHCP.

# Early Review or Reassessment

## Early review

While the LA must arrange an annual review of your child's EHCP's by law, you have the right to ask for an early review at any time if you think:

- Your child's education, health or social care needs have changed
- The education setting they attend is no longer the right one for them
- Their needs are no longer being met by the provision stated in the EHCP

### Action:

Write to the LA's Director of Children's Services requesting an early statutory review, explaining why you believe one is needed – copy in the nursery, school or college so that they are aware. This applies also to asking for a reassessment.

### Note:

The LA can refuse your request and there is no right of appeal.

In the case of refusal, you could:

- Wait until the annual review

- Gather more evidence and make another request for an early review
- Ask for your child's needs to be reassessed

## Reassessment

You can ask for a reassessment if you think:

- Your child's needs have changed since the last EHCP was issued
- More help is required or a different type of support
- Your child should attend a different type of nursery, school or college

### Note:

The LA can refuse your request if it has carried out an assessment within the last six months or it feels one is not needed. However, in this case, you can appeal if the local authority disagrees with your request.

The LA has 15 days to respond to your request – if it refuses, it must make you aware of your right to appeal against its decision to the SENDIST.

*See the section: SENDIST Appeals.*

## The Reassessment Process:

If it agrees, the LA must carry out a full EHC needs assessment, including obtaining all the information and advice that was needed the first time.

If it decides to amend the EHCP, you must be given at least 15 days to comment on the contents and ask for a particular school to be named.

The LA has 14 weeks from the date it agreed to reassess to issue a final EHCP – if it decides not to amend the plan, you must still be notified and sent a final version of the plan within this timeframe.



# When an EHCP is Brought to an End

An LA can decide to end or 'cease to maintain' an EHCP at any time, meaning it no longer has a legal duty to deliver the plan, but only if:

- It is no longer responsible for the child or young person
- It is no longer necessary to maintain the EHCP

## No longer responsible

An LA would no longer be responsible if a young person (16-25) has:

- Taken on a paid job (this excludes apprenticeships)
- Moved on to university or other higher education
- Left education and no longer wants to learn (at 18 or over)
- Turned 25 years of age
- Moved to a different LA area

## No longer necessary

If a child or young person no longer needs the special educational provision set out in an EHCP, the plan may become unnecessary. However:

### Under 18

If your child gets excluded from school or college, or leaves voluntarily, the LA must review their EHCP and amend it to ensure they continue to receive education or training.

### 18+

The LA cannot just end an EHCP if a young person aged over 18 stops attending the school or college in their plan without first holding a full review.

It must establish that they no longer want to pursue any further education or training in any setting, or that it would be inappropriate for them to continue. If the young person would like to return to a different setting, the LA must amend the EHCP to name an appropriate one.

### 19+

When a young person is over 19 years of age, the LA must consider whether the plan's expected outcomes have been met. It cannot simply end the EHCP because of their age.

Similarly, the LA cannot just stop a plan just because outcomes have been achieved – there may be new expectations that need to be set for a young person to transition into adulthood effectively.

### 25+

If at the age of 25, a young person still has an EHCP, it should not end until completion of the academic year in which they turn 25.

### Note:

The LA should not introduce new criteria for continuing with an EHCP, such as expecting a young person to get a job, which may not be possible.

### What must happen?

The LA must by law:

- Consult with the child's parents or young person along with the head of the school or college they attend
- Issue a formal 'Cease to Maintain Notice' to the parent or young person giving its reasons for wanting to end the plan

# Sendist Appeals

## What is a Special Educational Needs and Disability Tribunal (SENDIST)?

If you are unhappy with a decision about connected to an EHC assessment or plan, you may have the right of appeal to SENDIST.

However, save in one type of appeal, you must consider mediation before appealing. This does not mean that you actually have to go through mediation, but you do have to consider it in most cases. *See the section on: Mediation.*

It is the parent who has the right of appeal to the SENDIST for a child under 16 – above this age, it is the young person (up to the age of 25).

You can appeal against a local authority's refusal to:

- Assess a child or young person's EHC needs
- Reassess their EHC needs
- Issue an EHCP
- Change what is in an EHCP
- Maintain an EHCP

You can also appeal the health and social care sections of an EHCP (Sections C, D, G and H) when they relate to a child's special educational needs, special educational provision, or a school placement (B, F and I).

If an LA ends a plan, it must continue to fund provision at least until the time allowed for an appeal expires – if an appeal is lodged, funding must continue until proceedings are concluded.

### Note:

An appeal must be lodged within two months of a 'Cease to Maintain' notice being issued or within one month of a mediation certificate, whichever is later.



# Mediation

Unless your appeal is only about which nursery, school or college should be named in an EHCP, you will have to consider mediation before appealing to the SENDIST.

The LA should provide you with details about mediation along with its decision letter and final EHCP.

## If you do not want to mediate:

Explain that you are not interested in mediation – the mediation adviser will then give you a mediation certificate to that effect.

## If you do want to mediate:

- Tell the LA you want to mediate – it must take place within 30 days of your request
- The LA cannot refuse mediation or make you attend another form of meeting first
- It must provide a representative with the authority to make decisions
- You have the right to take along someone to support you, including a lawyer
- You should be given a mediation certificate no later than three working days after mediation

## What happens next?

### Agreement:

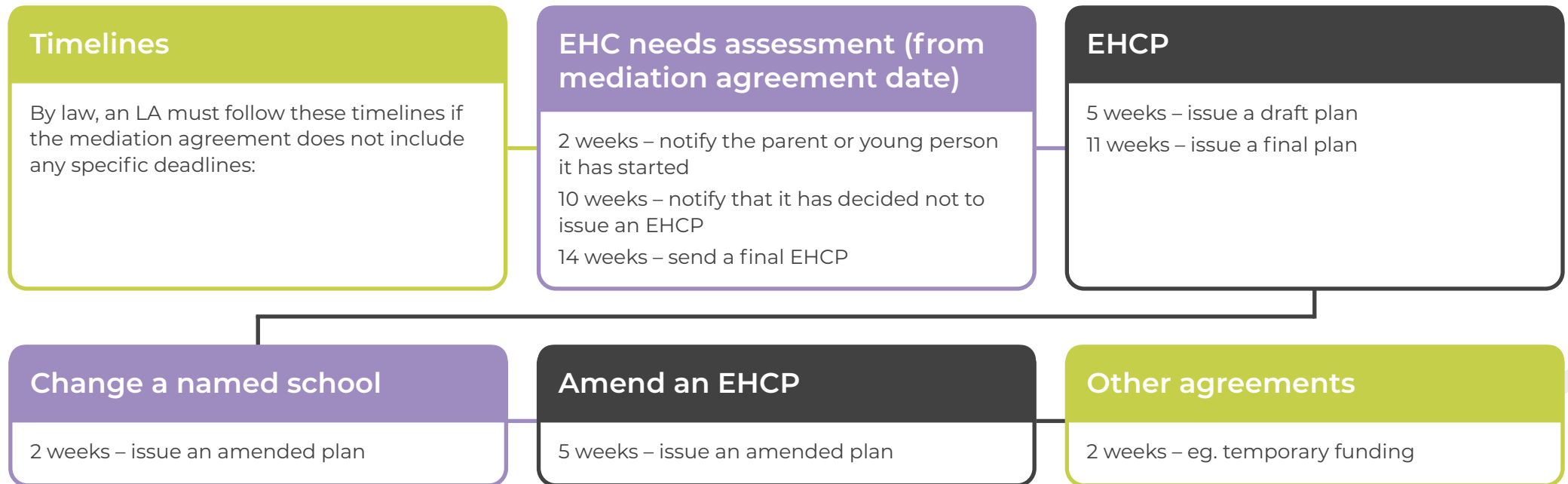
If the LA agrees to your request after mediation, you should ask for it to provide a 'mediation agreement', confirming in writing what measures or actions it will take.

### No agreement:

If the dispute has not been fully resolved, you can appeal to the SENDIST.



## Mediation Flowchart





## How We can Help You

As a specialist team of solicitors, we understand how important getting the right EHCP is for your child's future.

This is why we are fully committed to protecting the rights of children and young people to ensure they receive the education they deserve.

If you want the right EHCP for your child, we can assist and be instructed in the following areas:

- Appealing a refusal to assess for an Education Health Care Plan (EHCP)
- Appealing a refusal to issue an EHCP

- Appealing the contents of an EHCP
- Appealing a refusal to re-assess
- Appealing a decision to cease to maintain an EHCP
- Judicial Review

Time to get the support your child needs? Our team is here to help.

You are not alone. **Join our growing community of parents seeking EHCP and SEN law advice support.**

Email Thomas

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