



Making SENse

How to navigate
the SEN system,
SEND law and EHCPs

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What is SEN?

Special educational needs (“SEN”) impact a child’s or young person’s ability to learn. The ways in which SEN effects the ability to learn depends on the types of SEN a person has. SEN can have a bearing on a person’s ability to comprehend, concentrate, read, write and/or do physical things such as writing.

The law states someone has SEN when, if they are of school age or a young person:

1. They have a learning difficulty and/or a disability

A person has a learning difficulty or a disability if they have significantly greater difficulty in learning what the majority of others of the same age learn, or they have a disability which makes it difficult for them to use facilities usually provided in mainstream schools or colleges.

The law defines what a disability is. Someone has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out day to day activities.

2. Their learning difficulty or disability requires extra help or ‘special educational provision’ to be provided for them.

For children aged 2 or more, and for young people, special educational provision means any educational or training support that is additional to, or different from, that which would be provided generally for other children or young people of the same age.

Does your child have SEN as defined by the law?

If your child potentially has SEN as defined in law, there are a few points to think about, such as:

- Do they have a learning difficulty or disability?
- Does special educational provision need to be made?
- How old is your child, and how will this affect their needs?

In particular, your child’s age will affect whether they will be considered to have SEN, as different rules will apply depending on the circumstances.

Let’s look at the above questions in more detail, to see how they can be used to make an assessment for SEN as defined in law.



Does your child have a learning difficulty or disability?

A child who is of school age (aged five or more) could have a learning difficulty or disability if the following applies:

- They struggle with learning far more than other children of the same age.
- They have a disability or health condition that makes it difficult for them to use school facilities in the same way as their peers.
- They have a mental or physical impairment which makes it difficult for them to carry out normal, everyday activities, or it has a detrimental and/or long-term effect on their physical or mental health.

Does special educational provision need to be made?

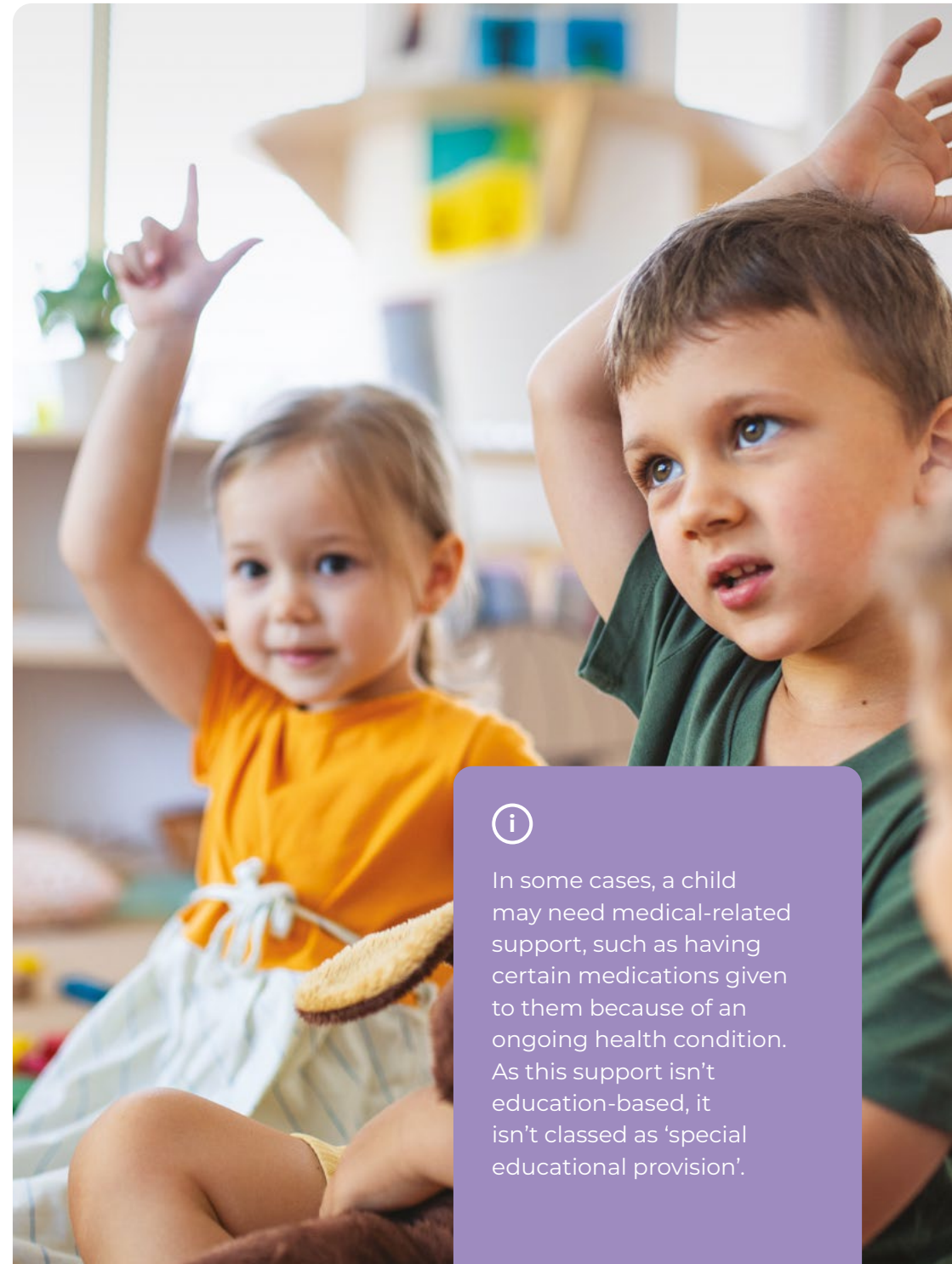
If your child is under two, 'special educational provision' applies to educational or social care support of any kind.

'Special educational provision', for a child aged two or more or a young person, means educational or training provision that is additional to, or different from, that made generally for others of the same age in mainstream settings.

Children over the age of two with a learning difficulty or disability can receive special educational provisions, including:

- Providing written materials in larger print that is easier to read
- Having personal support
- Sign language communication
- Being in a different class or year group

Every child is unique, and the support they receive will be tailored to them, so provision offered by schools are wide-ranging. In order for a child to be classed as having SEN, the adjustments provided to them must be educational or training-based, and the support provided has to be different than that given to other children of the same age.



In some cases, a child may need medical-related support, such as having certain medications given to them because of an ongoing health condition. As this support isn't education-based, it isn't classed as 'special educational provision'.

What kinds of learning difficulties constitute SEN?

A child may have more than one learning difficulty or disability. Here are some examples:



Learning, thinking and understanding concepts

Some children may have difficulty with focus and concentration, spelling and reading. For instance, they may have a condition such as dyslexia.



Behavioural and emotional difficulties

Some children may struggle with confidence, or they may find it difficult to follow instructions or do as they are told when in school because of a condition like ADHD.



Communication and language difficulties

Some children might find it hard to express themselves and communicate effectively or understand what other people are saying to them. This may cause problems with social interaction and making friends or their ability to connect with their environment.



Sensory or physical impairments

A child may have a physical disability or medical condition that affects their ability to learn, such as visual impairment.

How should local authorities be helping parents/carers of children with SEN?

Responsibilities of local authorities

Local authorities have a legal responsibility to children with special educational needs (SEN).

Once a local authority is made aware of a child in its area who has SEN, it should assess them and provide support to help with their learning and development, so the child can achieve their potential. These assessments should be written down in a SEN Support Record.

If you have a child with SEN who attends nursery, school or post-16 college, then that academic institution has a responsibility to support them. This includes providing an inclusive learning environment where a child can learn alongside their peers, and making regular assessments to determine their needs. This responsibility falls under an important piece of legislation called the **Children and Families Act 2014**.



Education, Health and Care needs assessments

If your child needs more help and support than their educational setting can offer, your local authority must conduct an Education, Health and Care (EHC) needs assessment.

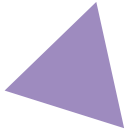
This assessment can lead to an EHC plan, which should name a suitable school or other place of learning that can provide the support.

Once an EHC plan has been created for a child, the local authority has a legal duty to provide the provision set out in that plan. A lack of funding is not a lawful reason for failing to provide support set out in an EHCP.





The Local Offer



Local authorities must publish a Local Offer, which gives families with children with SEN jargon-free information about support services available in their local area. Every local authority is responsible for compiling a Local Offer and making sure it's easily available to the public.

You'll be able to find your Local Offer through your through your local authority's website.

While the Local Offer is designed to be a source of information for parents and children, local professionals such as GPs can also use it to see the services available.

The Local Offer should provide the following:

- Clear information which sets out the entitlements of parents and children, with details of where services for children with SEN can be found.
- Up to date details of educational, health and care services offered, including independent nurseries, colleges and schools, therapy and social care facilities.
- Details of home to school/college transport arrangements.
- Details of support available for independent living in adulthood.
- Transparency on how decisions are made, and who is responsible for them.

- Eligibility criteria for SEN services across health, education and social care.
- Details on where to go for support and advice, as well as how to make complaints or appeal decisions.
- Accessible information that is simple to read and understand, and purely factual. It should be presented in a way that makes it easy to access based on a child's or parents' needs, such as by age or year group, or by special educational provision.

The Local Offer isn't legally binding, so there's no guarantee that a service in the Local Offer will be available to give support.

However, councils must contact parents, young people and children with SEN and use their feedback and findings to develop the Local Offer and review it at certain times. Public comments must also be published and there should be an easy way for the public to comment and give feedback on the Local Offer.





Filing a complaint against an authority

If you suspect that your council isn't complying with its legal responsibilities in regard to The Local Offer or children with SEN, you can file a complaint to challenge this. Speak to us today about how we can help your family make a complaint against a local authority.



How should education settings help?

All nurseries, schools and colleges have a legal responsibility to identify and support young people and children with SEN (special educational needs).

Receiving SEN support

Mainstream schools, colleges and nurseries can support children using their own resources and staff.

This means that children enrolled with these institutions can receive 'special educational provision' from them (known as SEN support), but they won't have an Education, Health and Care plan (an EHC plan).

SEN support records

Educational settings should identify and record the SEN a child has, what they expect the child to achieve in their learning while at the setting, and details of the provisions and support they have provided to help the child achieve their potential. This information must be recorded in a SEN Support Record.

Schools, nurseries and colleges must support children and young people with SEN as much as possible, which means they should do everything reasonably expected of them.

This is known as the 'best endeavours' duty. Nurseries must have discussions with parents about SEN decisions, while schools must meet with parents at least 3 times annually to discuss a child's SEN and their progress. For older children and those in college, decisions around SEN must involve the student as well as their parents.

EHC needs assessments

If a mainstream educational setting can't meet a child's SEN due to funding or resource issues, it should request an EHC (Education, Health and Care) needs assessment.

This is a legal process and must be carried out by a local authority. An EHC needs assessment must seek to identify a child's needs, provision they require to meet those needs, and outcomes or achievements that are expected of them. The local authority isn't able to pass responsibility or funding for the assessment onto a school or college.

Parents can also request an EHC needs assessment themselves. In some cases, this can lead to a child having an EHC plan – a legal document outlining special educational needs, support a child or young person requires and their learning goals or outcomes.

The SEN and Disability Code of Practice 2015

Otherwise referred to as 'the Code', this explains the duties of nurseries, schools and colleges in terms of how they should help children with SEN.

The Code applies to all educational settings except those that are completely independent. Educational settings must have 'regard' to the Code, and follow it or have a good reason why they haven't been able to.

They must also indicate which alternatives have replaced the Code if this is the case.

A child's right to an inclusive education

Every young person and child with SEN has the right to an inclusive education in a mainstream school, where they are surrounded by friends and peers of the same age. They should also be included in school activities in the same way as children without special educational needs.

As set out in section 35 of the Children and Families Act 2014, a school can however exclude a child with SEN from activities if the following applies:

- Their inclusion isn't 'reasonably practicable'.
- Their inclusion prevents them from receiving support that they need, or inhibits the learning of other children.
- Their inclusion isn't an efficient use of resources.

Schools have to do all they can to include children with SEN in activities. If there are obstacles (such as funding and a lack of resources) that are preventing a child with SEN from being included, better provisions should be sought through an EHC plan, or by making changes to an existing EHC plan.

If a disabled child is being excluded from activities, this could be disability discrimination under The Equality Act 2010. Including children with SEN in everyday school activities is an important part of The SEN and Disability Code of Practice 2015. Any school or training provider needs to have Accessibility Plans that explains how a learning environment is made more accessible for disabled pupils.

Making a complaint of disability discrimination

Although the SEN and Disability Code of Practice 2015 doesn't apply to independent schools, all schools, independent or not, must abide by the Equality Act 2010.

If you believe your child's school, nursery or college has breached The Equality Act 2010 and hasn't complied with its legal obligations, there are steps you can take to contest this. Our team of specialists can help guide you through the process.

Education, Health and Care assessments & plans

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)

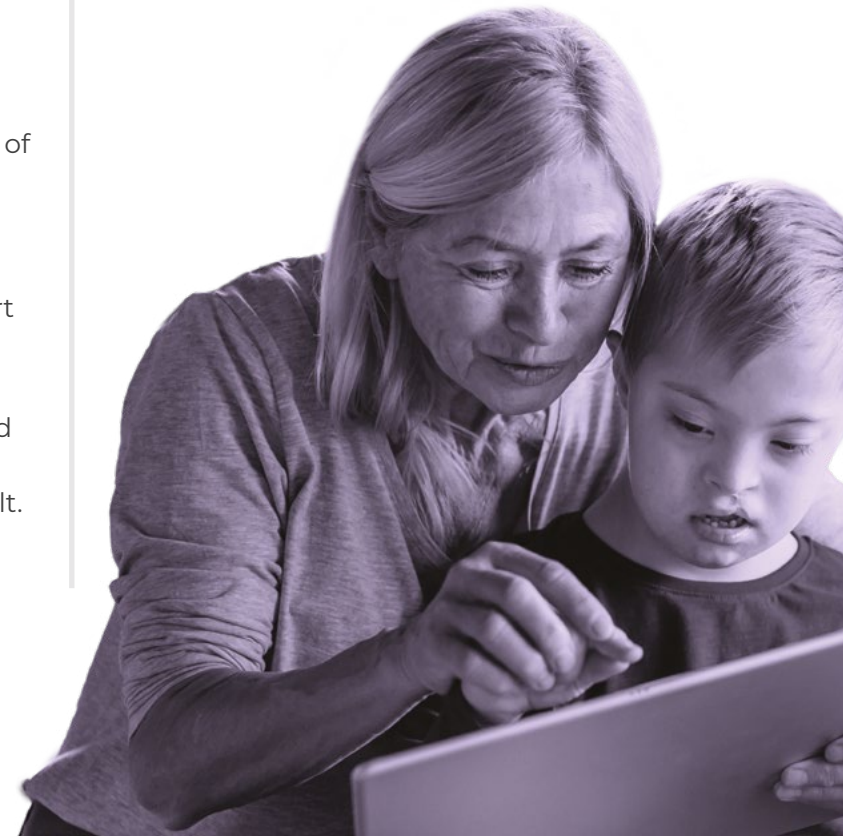
If your child has SEN and you do not feel that the nursery, school or college they attend is able to provide the help and support needed, you should ask the LA for an EHC needs assessment.

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.

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

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):

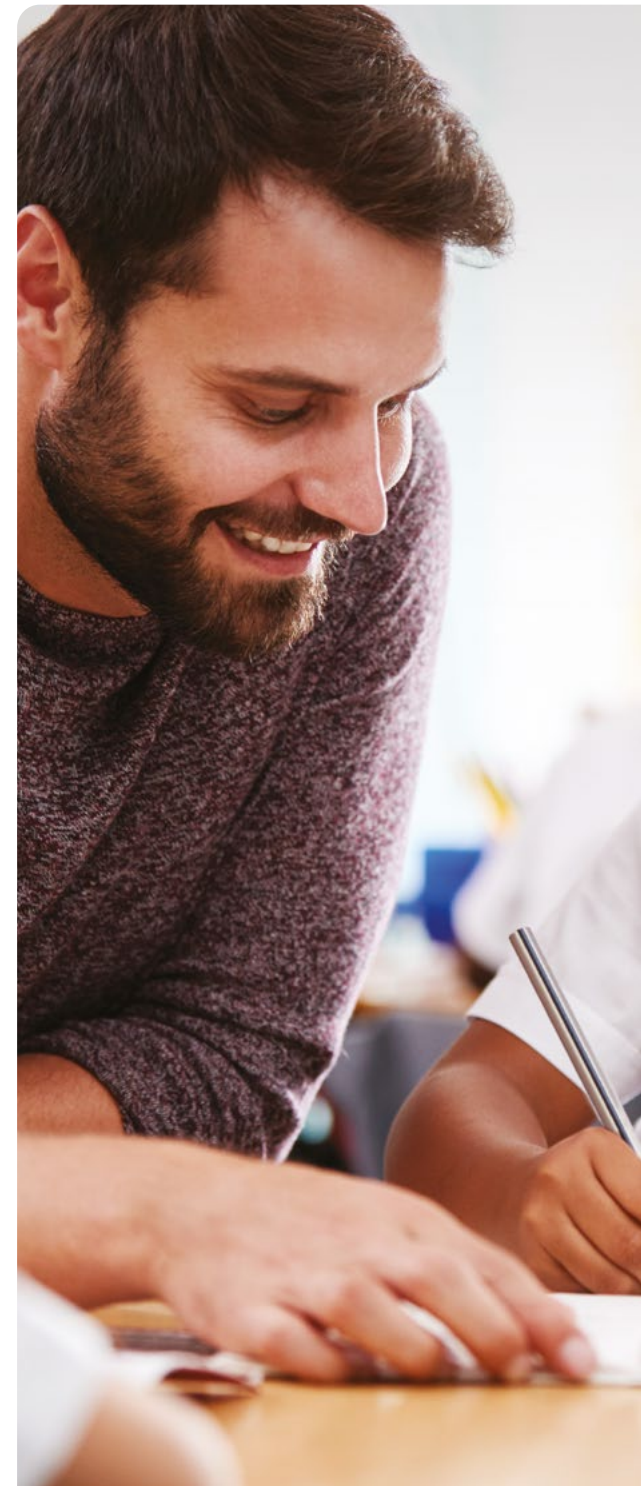
- An educational representative
- A health care professional
- An educational psychologist
- Social care information and advice
- Any other person the LA thinks is appropriate
- For a child or young person in Year 9 or above, information and advice around preparing for adulthood and independent living
- 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.





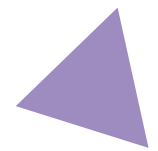
How long will it take?

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.

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).

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.

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.

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.

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).

- 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

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.



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.

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.

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.

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.

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:

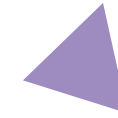
- Assess a child or young person's EHC needs
- Reassess their EHC needs
- Issue an EHCP
- Change what is in an EHCP
- Maintain an EHCP

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:

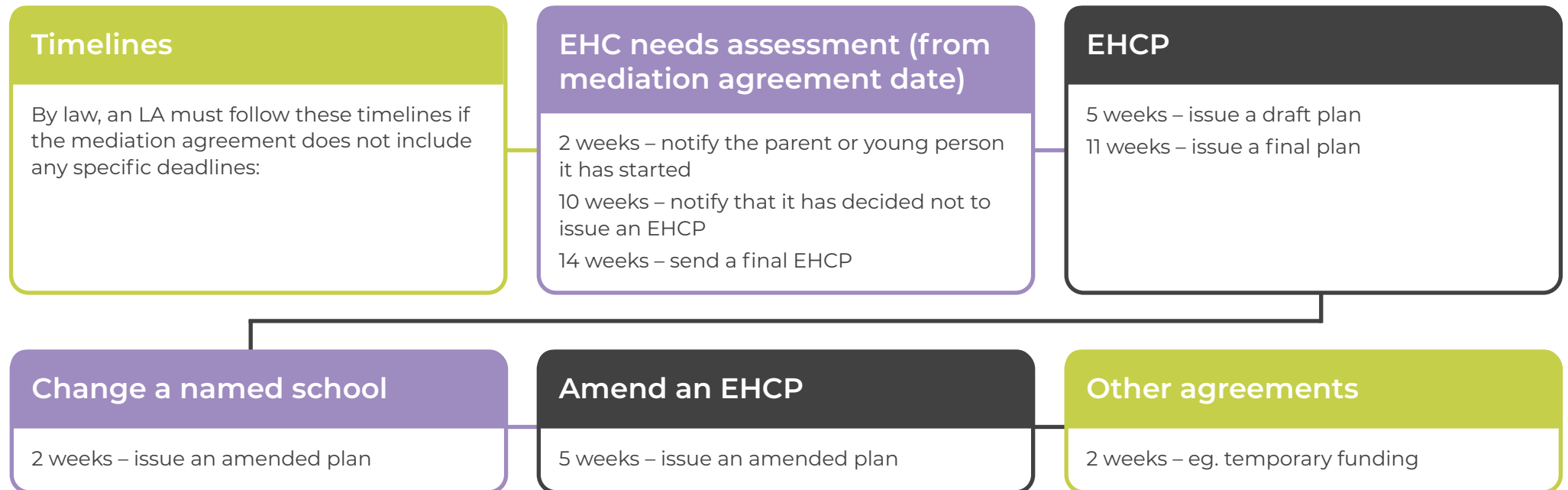
If the LA agrees to your request after mediation, you should ask for it to provide a 'mediation agreement', confirming in writing what measures or actions it will take.

No agreement:

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



Mediation flowchart





Choosing a nursery, school or college

Education: making the right choice

Choosing a place of learning for your child is one of the biggest decisions any parent has to take.

For the parent of a child with Special Educational Needs (SEN), finding the right nursery or school – and helping them to choose a college when they are older is vital.

There are various types of educational institution to consider: mainstream and special; those maintained by the local authority and non-maintained ones.

Except in limited circumstances, all children with SEN have the right to attend a mainstream nursery, school or college, and arrangements must be put in place to support your child's individual needs.

If your child has an Education, Health and Care Plan (EHCP), they will need extra or specialist support, which may also be provided in a mainstream school, but you may feel that a special school is necessary.

Types of school: mainstream or special

A special school or college caters especially for students with SEN

Mainstream means a nursery, school or college that is not 'special' and is part of the general education system

Both special and mainstream education institutions fall into these categories:



Maintained

These are controlled by a local authority (LA) and include:

- Mainstream schools
- Special schools
- Mainstream nurseries (stand-alone or part of a community primary school)
- Further education and sixth form colleges
- Alternative schools eg. pupil referral units

Note: Mainstream places of learning must follow statutory guidance, which sets out what schools and local authorities have to do to comply with the law.

Non-maintained

These are not maintained by an LA but are controlled and funded directly by the Government's Secretary of State for Education. They include:

- Mainstream academies
- Academy special schools
- Alternative provision academies
- Academy boarding schools
- Free schools – run by charities and non-profit groups
- University technical college (UTC) schools – with a science, technology, engineering and maths focus
- Studio schools – teaching mainstream qualifications through project-based learning

Note: An academy trust that has a funding agreement with the Secretary of State. They must follow most (but not all) of the law and guidance for maintained schools.

Types of school: others (not controlled by LA or Secretary of State)

Independent

These are mostly controlled by charities but there are some private 'for-profit' owners. These include:

- Prep schools – private primary schools
- Public schools – private secondary schools
- Private nurseries

Non-maintained special schools

These are run by charitable foundations (not-for-profit) as schools for children with SEN – either with or without an EHCP.

Section 41 schools

These are independent schools approved by the Secretary of State that can be named in an EHCP (as well as maintained and non-maintained schools). Private post-16 institutions can opt for Section 41 status.



The right to a mainstream education

With only a few exceptions, if a child or young person has SEN, they have the right by law to learn in a mainstream place of learning.

Without an EHCP

A child or young person without an EHCP must be educated in a mainstream setting.

There are few exceptions to this – for instance, if the parents prefer to pay for an independent school or home-school.

Note: An LA must not place a child without a plan in a special institution except in a few circumstances (and usually only with a parent or young person's permission).

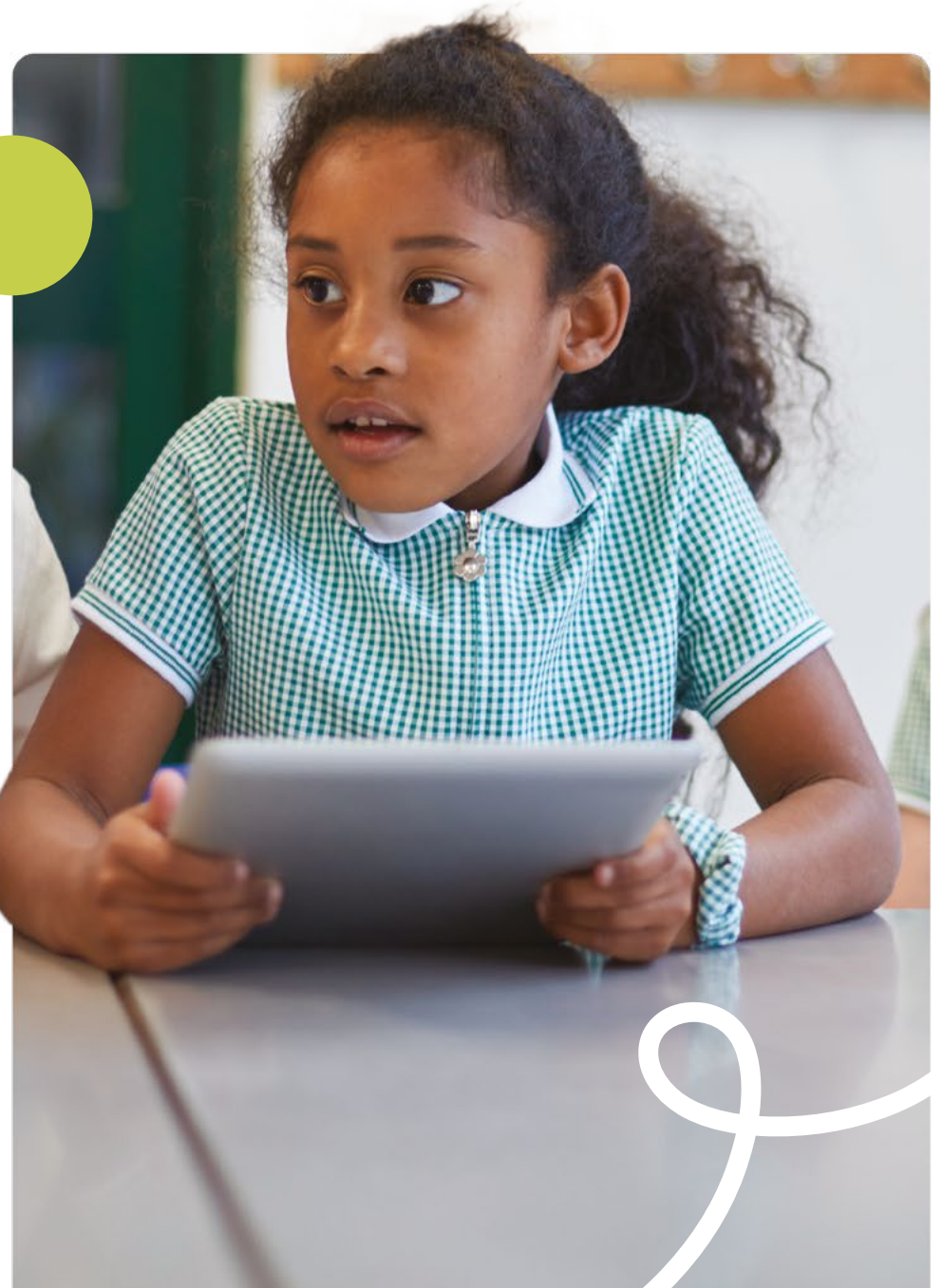
With an EHCP

A parent or young person with an EHCP, who wants to attend a mainstream place of learning, must be given that right. Please note that they are entitled to mainstream education, but not to attend a particular school.

The LA can only refuse if:

- It would affect its ability to educate other students efficiently and
- There are no reasonable steps it can take to avoid this

Note: If a nursery, school or college is named on a child or young person's EHCP, it must admit them.



Choosing a nursery, school or college: without an EHCP

By law, your child must not be refused a mainstream place because the school does not feel able to cater for their SEN.

- A child or young person with SEN but no EHCP must receive SEN support from the school
- A SEN Information Report (SIR) must be prepared by maintained nurseries and schools, and academy schools
- The SIR, which details the institution's SEN policy and how it implements it, must be published on its website

Exceptions

Sometimes, a place in a special school can be secured without an EHCP, but only in limited situations, for example, if:

- It is necessary while an EHC assessment is carried out
- There has been a change in circumstances (if all parties agree to this)
- A special school is established in a hospital, and is either a community or foundation special school, or an academy school
- A special school or college is an academy that allows children with SEN who do not have an EHCP

Note:

Sixth form and further education colleges do not have to produce an official SIR, but they should have information available on the SEN support they provide.



Choosing a nursery, school or college: with an EHCP

As a parent or carer, you have the right to request a place of learning or type of place of learning to be named in an EHCP.

You can ask for a named nursery, school or college either at the draft plan stage or when any amendment is being made to the EHCP (for example, following a review or reassessment).

You are entitled to ask for:

- A maintained school or nursery – mainstream or special
- An academy – mainstream or special
- A non-maintained special school
- A Section 41 school
- A further education college

An LA can only refuse a particular school if it is either:

- Unsuitable for a child or young person's age, ability, aptitude or SEN
- Incompatible with providing efficient education of other students or
- Incompatible with the efficient use of resources

Before naming a school, the LA must consult with the governing body, owner or principal or, if the school is in another local authority area, the relevant LA. Even if it receives an objection, the LA issuing the EHCP can still name the school.

Note:

You have the legal right to ask for one of the education settings listed above, but if you prefer an independent school or college for your child, you can ask and argue your case for a place. You will need an offer of a place from the independent setting you are asking for.

EHCP: A named nursery, school or college

- Once a place of learning is named in an EHCP, it must admit a child or young person
- If a final plan does not include a name (only type), it means no nursery, school or college has a duty to admit your child.
- You can appeal to the SENDIST if you receive an EHCP with no named school or you disagree with the choice of school or type of school made by the local authority.



Disagree with the school, college or other setting named in an EHCP?

If you request a particular school, college or other setting during the EHC needs assessment process or during an annual review and the LA does not agree to your request and names a different setting, you can appeal to the SEND Tribunal.

An appeal form, along with reasons of appeal, must be sent to the Tribunal within two months of the LA's decision letter, or one month from the date you obtain a mediation certificate, whichever is the later.



Education Health and Care Needs assessments: assessment timeline

If your child has special educational needs (SEN) and you feel that their educational needs are not being met, you have the legal right to request an Education, Health and Care Needs assessment with a view to being issued an Education, Health and Care Plan (EHCP) for you or your child. The Education, Health and Care Needs assessment must be carried out by the Local Authority (LA).



The entire process, from making the initial Education, Health and Care Needs assessment request to finally receiving an ECHP should take up to 20 weeks by law. Lawful reasons for extending the timeline beyond the 20 week deadline are limited.

Weeks 0-6: decision to assess

What do you need to do?

Send a letter to the LA asking for an Education, Health and Care Needs assessment stating why you think you or your child has or may have special educational needs and how it may be necessary for special educational provision to be made through an EHC plan for you or your child. Be sure to supply all relevant information, advice, documents and reports you have.

IMPORTANT: you will need to consent to your and/or your child's information being shared with other parties involved in the Education, Health and Care Needs assessment process.

What does the LA need to do?

Once they have received your request, the LA must respond within six weeks, letting you know whether it will undertake a EHC needs assessment or not. If they do not grant the assessment, the letter should explain why.

Whilst LAs may have their own policies, it is only the law that should be applied when the LA is deciding if an EHC needs assessment should take place. If you disagree with the LA's decision, you can request a meeting with the LA to discuss it, mediate and/or appeal to the Special Educational Needs and Disability Tribunal (SENDIST).

IMPORTANT: If you choose to appeal, you must do so within two months starting from the date of the LA's decision letter or one month from the date on a mediation certificate, whichever is later.

Questions to ask before moving to the next stage

- Have you sent your EHC needs assessment request to the LA?
- Would you prefer that a specialist SEN solicitor prepare your EHC needs assessment request and submit it to the LA?
- If you have sent your EHC needs assessment request, has the LA responded within six weeks?
- Has the LA declined to grant an EHC needs assessment?
- Have they granted an assessment?



Weeks 6-16: assessment and evidence gathering & potentially a draft EHCP

What does the LA need to do?

Once the LA has agreed to carry out an EHC needs assessment, the LA will seek advice and information from a range of parties. These include an educational psychologist, you as parents, carers or the young person and educational advice (from, for example, a Headteacher) among others). All persons contacted are legally obligated to respond within six weeks. This is a legal deadline with limited exceptions to it.

Once the LA has all the requested advice and information, it will decide on whether or not an EHCP is needed by week 16. If the LA does feel an EHCP is needed, it will prepare a draft EHCP and should send it to parents, the school and all parties that contributed to the EHC needs assessment by week 14. The parent, carer or young person then has a minimum of 15 days after receipt of the plan to make representations about it, ask for a meeting with the LA to discuss the plan and tell the LA the type or actual school or college they would like.

At week 16 the LA must consult with the school or college the parent, carer or young person has requested. The school or college should respond within 15 days.

IMPORTANT: The LA can refuse to name the school or other educational institution specified by you or a parent or carer, but can only do so based on limited reasons stated in law. Be sure to question their reasoning if they do refuse. If the LA does not believe an EHCP is needed, it must inform you by week 16.

What do you need to do?

You and your child will be contacted as two of the relevant parties in the EHC needs assessment process. You must respond to the LA's request for information within six weeks. This is a legal requirement.

Questions to ask before moving to the next stage

- Has the LA decided against drafting the EHCP?
- Have they decided to draft the EHCP? Ensure it is legally compliant and includes everything it needs by getting an EHCP health check. You can submit the health check report as part of your response to the LA's draft EHCP.
- Move to the next stage if you have already provided your comments on the draft EHCP and nominated an education setting.



Week 20: Final plan

What does the LA need to do?

The LA should issue the final EHCP by week 20. Copies will be sent to you and the school or the other educational institution your child will attend. The letter accompanying the final EHCP will outline your right to appeal if you are unhappy with the contents of the EHCP, as well as information on mediation.

The entire process has a 20-week legal deadline, with the process starting from receipt by the LA of the request for an EHC needs assessment. Any extension beyond 20 weeks is only permitted by law in specific circumstances.

IMPORTANT: Staff shortages, lack of resources and being on a waiting list are not lawful reasons to extend the 20-week deadline. Be sure to question the LA's reasoning should they try to extend the process longer than 20 weeks.

Questions to ask before moving to the next stage

- Have you received the final EHCP by week 20?
- If you have received the final EHCP but are not happy with its contents, including if you are not happy with the school or other educational institution named in the EHCP, you can mediate and/or appeal.
- Are you happy with your or your child's EHCP?



Happy with your EHCP? Regularly review it!

Now that you've received the EHCP for your child, it should be reviewed yearly and you will have the opportunity to suggest changes to the plan at those reviews. You can use our EHCP health check service to ensure the plan is legally compliant and includes everything it needs to. You can submit the health check report as part of the annual review process. For children under the age of five, the reviews will take place every six months. If an issue arises before the scheduled review, you can request an early or emergency review from the LA.

If you request changes to an EHCP at any review, the LA must decide if it is going to make some or all of those changes, or keep the EHCP the same. If you are not happy with the outcome, you can mediate and/or appeal to the SEND Tribunal.

EHCP annual review checklist and phase transfers

Annual review: what you need to know

Your child has an Education Health and Care Plan (EHCP), but is it providing all the support they need?

Once your child has an EHCP in place, the local authority (LA) must by law carry out an annual review to look at whether any changes are required to it.

It is vital that parents, carers and young people understand what an EHCP should contain to prepare for an annual review.

What is an EHCP?

This is a legal document that sets out:

- A child or young person's special educational, health and social care needs
- The additional or specialist provision to meet their needs
- The outcomes that the extra support should help them to achieve
- The nursery, school or college they will attend

When is an annual review held?

The first annual review must be completed within 12 months of the date when the EHCP was issued.

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

If the annual review process is not followed, a parent, carer or young person (16-25) can make a complaint to the local authority or pursue judicial review.

Please remember that while an EHCP must be reviewed annually, you can request a review at any time if you have concerns about your child's progress, the support being provided, or their nursery, school or college placement.



Annual review checklist: before the meeting

Step 1: Invitation

Timeline: At least 2 weeks before the meeting

What to expect: You should receive an invitation to attend the annual review. Invitations will also be sent to the head of the nursery, school or college and other relevant representatives, such as the LA's education and social care officers, and a healthcare professional. Please note that, while they must be invited, attendance is not compulsory.

Tip: If you have received less than two weeks' notice, you could ask the LA to postpone the meeting.

Step 2: Information

Timeline: At least 2 weeks before the meeting

What to expect: All persons invited to the annual review meeting (including you) will be asked to provide relevant information and advice relating to your child's progress and their access to learning, which should be circulated to all those invited.

The information is crucial as it will likely help you decide what suggested changes to the EHCP (if any) you want to put forward.

Tip: If you have not received this information at least two weeks before the review meeting, ask for it to be rescheduled. This stage is one of the most often overlooked or not followed properly, but is crucial.

Step 3: Prepare

Timeline: ASAP

What to expect: It is really important to prepare as well as you can. You might think only a few tweaks are needed to your child's EHCP, or maybe you want a completely new school for them.

Whichever is the case, you want to make sure that everything is covered, so make notes and set out what should change – but give yourself plenty of time to do this.

Tip: You could ask a supportive relative or friend to go with you to a review meeting. You might want a solicitor to attend with you or an organisation – like the Information, Advice and Support Services (IASS) who may also be able to send someone to help you.



Annual review checklist: after the meeting

Step 1: Recommendations

Timeline: Within 2 weeks of the meeting

What to expect: The LA should provide all invitees a written report setting out:

- Any recommendations on how the EHCP should be amended
- How they differ from ones suggested at the review meeting
- All the information and advice obtained about the child or young person

Tip: Let the LA know as soon as possible if you think any mistakes have been made or if any information is missing.

Step 2: Decision

Timeline: Within 4 weeks of the meeting

What to expect: The LA must by law decide and inform you whether it will:

- Keep the EHCP as it is
- Amend it
- Cancel it ('cease to maintain')

Tip: Make a note of the deadline – if the LA fails to issue its decision within four weeks of the review meeting, you can make a formal complaint or commence judicial review.

Annual review checklist: the outcome

If the EHCP stays the same / the LA cancels it

What to expect: The LA must give a parent, carer or young person:

- Notice of their right to appeal to a Special Educational Needs and Disability Tribunal (SENDIST) along with the relevant time limits
- Mediation information
- Information about disagreement resolution services and SEN advice

Tip: If the LA has not given reasons for its decision (they usually do), ask for them.

Remember:

If an LA fails to keep to the deadlines, it is in breach of the law, and you can make a formal complaint or commence judicial review.

If the EHCP is amended

What to expect: The LA must give you:

- A copy of the amended plan and notice of proposed changes
- Evidence supporting those amendments
- The right to make representations about the plan content or proposed changes (at least 15 days)
- The right to request a named nursery, school or college (at least 15 days)

It must also:

- Make it clear that it is an amended plan
- Include the date it was amended, as well as the date of the original plan
- Append the review minutes, as well as other relevant information and advice

Tip: If the LA have not agreed to all your changes and/or your chosen educational setting, you can appeal to the SEN Tribunal.

Phase transfers

By law, an LA must review and amend an EHCP when a child or young person transfers between stages of education.

By 15 February in the year of transfer:

- Nursery to school
- Infant to junior school
- Primary to middle school
- Primary to secondary school
- Middle to secondary school

By 31 March in the year of transfer:

Secondary school to further education

At least 5 months before:

College to another college

How to make a complaint or challenge a decision

Getting your child the right support

It can be a steep learning curve for parents and carers with a child with Special Educational Needs and Disability (SEND), even before they begin their education journey.

When your child starts nursery or school, the challenges faced can multiply as they discover life outside the home, learning in a different setting with new people, new rules and new expectations.

You want your child to get the best start and to have the best education possible – which includes support that recognises their individual needs. To enjoy learning, to thrive, and to achieve their full potential.

And when they move on to higher education, a young person might need as much care, support and attention as they did at nursery or school as they transition into adulthood.

So what can you do if you are the parent or carer of a child with SEN, or a young person whose needs are not being adequately supported? How do you get your voice heard?

Making it simpler for you

Complaining or challenging a decision by a nursery, school, college or local authority can feel like a daunting prospect, an educational jungle fraught with red tape, legalities and disjointed advice.

At Birkett Long, we know how much of a struggle it can be for you to get your child the support they need, and how difficult it can be to tackle this area of law when things go wrong.

We also recognise that you have enough on your plate without having to comb your way through stacks of complicated and confusing information, just to find out what you can do.

That is why we have produced this simple guide to explain your child's legal rights and the steps you need to take when the system is letting them and you down.

Our specialist team of SEN lawyers are experts at helping families make successful claims and win appeals.

We provide practical and unrivalled legal advice based on years of experience to ensure that children and young people get the educational support they are not only entitled to, but deserve.

Knowing your rights

What rights does a child with SEN have?

Except in limited circumstances, children with SEN are entitled to be taught in mainstream nurseries, schools and colleges, and education settings have to provide support and reasonable adjustments so that they can take part fully in school life.

Mainstream schools (any school that is not a special school) and maintained nursery schools (funded by the local authority) must also ensure that children with SEN are included in activities together with those who do not have special educational needs.

Excluding a disabled child or young person from activities could amount to disability discrimination.

They can only be excluded from activities if:

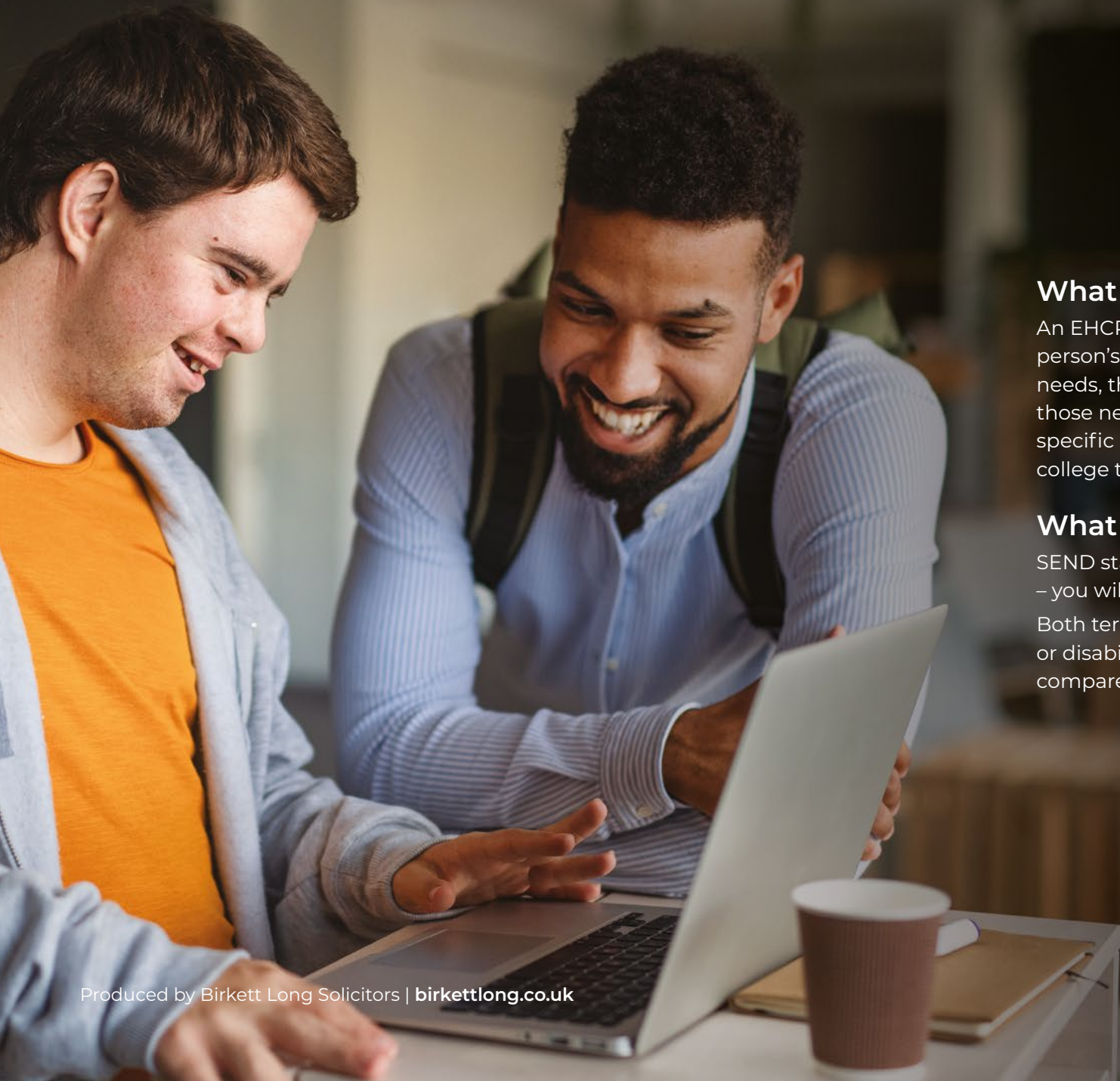
- It cannot reasonably be put into practice
- It would prevent them from receiving the support they need
- It would prevent the 'efficient' education of other children or use of resources

What SEN support is available?

Nurseries, schools and colleges have a legal duty to identify if a child or young person has SEN and to use their 'best endeavours' to provide support. This applies to all settings apart from wholly independent schools.

They should record what their needs are, what outcomes they expect them to achieve, and what provision is being put in place to achieve those outcomes in a SEN Support Record.

If they cannot meet your child's SEN, they can ask the local authority (LA) to carry out an Education, Health and Care plan (EHCP) needs assessment – parents, carers and young people (16-25) can request this, too. A request is made with a view to an EHC Plan being issued.



What is an EHC plan (EHCP)?

An EHCP is a legal document describing a child or young person's special educational, health and social care needs, the extra or specialist support required to meet those needs, how that support will help them to achieve specific outcomes, and the named nursery, school, or college they will attend.

What is SEND?

SEND stands for Special Educational Needs and Disability – you will also see the term SEN used.

Both terms are used to describe the learning difficulties or disabilities that make it harder for a child to learn, compared to children of the same age.

Making a complaint: nursery, school or college

Do you feel that not enough is being done to provide the right SEN support? Has your child been prevented from joining in with activities or discriminated against because of a disability?

Maybe they have been denied exam access arrangements or excluded without following the correct procedures – children with SEN are more likely to be excluded than their classmates who do not have SEN.

These are all valid reasons for making a complaint.

Sometimes, having an informal chat with your nursery, school or college can resolve issues. However, you may be forced to take more formal action.

If an education provider is not fulfilling its legal duties, there are several ways you can challenge this.

Failure to use 'best endeavours'

Educational settings have a legal duty to use their 'best endeavours' to provide SEN support, which basically means doing everything they can. This includes:

- Mainstream schools
- Maintained nursery schools
- Academies for 16-19s
- Alternative provision academies
- Further Education institutions
- Pupil referral units



Making a complaint: nursery, school or college

If you feel that a nursery, school or college is not doing everything it can to give your child SEND support, you can take these steps:

Step 1 – Informal discussion

Ask the class teacher and SENCo (Special Educational Needs Co-ordinator) for a meeting to discuss your child's support and how it is being implemented.

Step 2 – Request

Ask for a copy of your child's records so that you can see all the information held on them, which could be very useful to your complaint.

Step 3 – Complain

If talking has not solved the problem, make a formal complaint following the nursery, school or college's complaints procedure (usually published on their website).

There is no fixed time in law for your complaint to be investigated, but the complaints procedure should detail the steps that will be taken to deal with your grievance.

Complaint about an EHC Plan

If your child has an EHCP, but it is not being implemented properly, raise it with the nursery, school or college and complain in writing to the local authority. It is the local authority's legal obligation to ensure that special educational provision stated in section F of an EHCP is being secured.

Appropriate authorities

Maintained school/nursery – governing body

Academy school – proprietor/trust

Pupil referral unit – management committee

Sixth form/further education college – governing body/board

Escalating a complaint: nursery, school or college

If you're still unhappy with how a nursery, school or college has dealt with your formal complaint, you can escalate the matter further:

Schools/colleges

Complain to the local authority (LA) for your school – they can intervene in some instances if your complaint has not been addressed or you are not satisfied with the outcome of your complaint.

If the LA is unable to resolve the matter, complain to the Department for Education (DfE) – it has considerable powers and can investigate a complaint about a school. Set out the facts, explain why the education provider's formal complaint procedure failed to achieve a satisfactory conclusion, and why you believe its actions are unreasonable or unlawful. Providing copies of letters or emails exchanged will strengthen your case.

While the DfE cannot deal with individual complaints about private schools, it can step in if a school is not meeting general standards in a number of areas, including education provision.





If your complaint is about a school and has not been resolved by the DfE, you can also escalate it to Ofsted.

However, Ofsted will not usually consider a complaint unless you have first followed a school's complaints procedure and then complained to the DfE.

Ofsted can order an immediate inspection of a school at short notice, if it feels your complaint is very serious.

Nurseries

Take your complaint directly to Ofsted – the DfE does not deal with grievances about nurseries or early years providers.

However, Ofsted will not usually consider a complaint unless you have first followed a nursery's complaints procedure.

Ofsted can order an immediate inspection of a nursery at short notice, if it feels your complaint is very serious.

Independent schools

Independent schools also have to publish a complaints procedure, which parents can request if it is not on their website.

If you have followed the complaints procedure without success, you could try to find out if the school is a member of an association like the Independent Schools Council and lodge a complaint with them.



Further action

Information Commissioner's Office (ICO)

To make a complaint about a data protection issue or failure by a nursery, school or college to provide information that you have the right to access, contact the ICO.

Local Government and Social Care Ombudsman

If a nursery, school or college has not implemented your child's EHC plan properly, or you are not satisfied with how an admissions appeals panel or independent review panel (in the case of an exclusion) has followed the applicable processes, you can complain to the Local Government and Social Care Ombudsman.

Special Educational Needs and Disability Tribunal (SENDIST)

This is an independent national tribunal that hears claims of disability discrimination against schools (as well as appeals against LA decisions about EHC Plans).

Judicial review

Usually considered a last resort, you may feel it is necessary to seek a judicial review.

Courts can step in to judge if a decision taken by a public body was made in a lawful, fair and reasonable manner – and reverse it if necessary.



Making a complaint: Local Authority

If your dispute is with a local authority – for instance, you may feel that it is failing in its duties by not securing provision stated in section F of an EHC plan – the first port of call is the LA's own complaints procedure.

Visit its website for this or ask for a copy, and follow the guidance – it is a good idea to keep copies of everything and proof of delivery, when your complaint is sent by email or post.

Additionally, you may also wish to 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 sticking to the law, along with your local ward councillor.

The next steps

What should you do if your formal complaint to the LA falls on deaf ears or it fails to act?

You could potentially take your dispute to the Local Government and Social Care Ombudsman.

For disputes over an EHC Plan or assessment, you can appeal to the Special Educational Needs and Disability Tribunal (SENDIST) – also known as the First-tier Tribunal, if you have the right to do so.

You could request a judicial review to judge whether a decision was lawful, fair and reasonable.

SEND Tribunal appeals

You can appeal to the Special Educational Needs and Disability Tribunal (SENDIST) 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 (including the nursery, school, college or other educational setting)
- Maintain an EHCP

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

This tribunal considers appeals by parents and carers (either a birth parent or one with parental responsibility), or young people, against LA decisions about the above, as well as disability discrimination claims against schools.

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 – unless, for example, your appeal is about a named school placement for your child.

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

You can also appeal about the health and social care sections of an EHCP, although SENDIST has limited powers when it comes to these actions.



Judicial review

There are a number of grounds for taking a public body to judicial review if there is no other way to resolve your complaint and your child is missing school as a result.

These include:

- The LA fails to issue a final EHCP within the statutory timescales
- It does not secure provision laid out in the EHCP
- It randomly or unreasonably stops home-to-school transport
- A school refuses admission to a child even though the school is named in their EHCP (without a formal exclusion)

The court will only consider the way a decision has been made – not the decision itself – and only if you have given the public body an opportunity to rectify the situation.

A parent or carer must be able to show that the nursery, school, college or LA is failing or simply refusing to comply with its legal duty.

The courts can force the public body to take a particular course of action or even reverse a decision.

Public bodies that can be subject to a judicial review include:

- Local Authorities
- School governing bodies
- Governors of maintained nurseries
- Governors of Further Education institutions
- Independent review panels for permanent exclusions
- Admission appeal panels

There is a time limit for applying for judicial review – within three months from the date when the decision or action being complained about happened. However, it is recommended that this is done as soon as possible and after taking legal advice.

Starting an action

Permission to bring judicial review will need to be sought from the Administrative Court in the Queen's Bench Division of the High Court.

It could take, in some instances, as long as a year for the case to be heard, but the court can be asked to take temporary action immediately until such time.

Disability discrimination

What is disability discrimination?

A disability is recognised and protected in law (Equality Act 2010) as a physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out their normal day-to-day activities.

While not all children or young people with special educational needs will be disabled and not all disabled students will have special educational needs, most are likely to fall under both legal definitions.

It is unlawful for a school or other education provider to treat a disabled student unfavourably in the following ways:

Direct discrimination

This happens when someone is treated unfavourably because of a characteristic protected by law, which includes disability. This could be a school refusing admission to a student or excluding them because of a disability.

Indirect discrimination

This is when a school's policies, practices or procedures that apply to everyone are less fair to a disabled student. For instance, telling a child that they have to complete their work in the same timeframe as all other students even though their disability might prevent them from being able to do so.





Unfavourable treatment arising from a disability

This means when a pupil is treated badly or put at a disadvantage, not because of a disability itself, but due to something related. For example, penalising a disabled student for having to take time off school for medical appointments or not allowing them extra toilet breaks because there are not enough staff available to help.

Failing to make reasonable adjustments

Schools and other education settings have a duty to provide reasonable adjustments for disabled pupils, meaning a measure or action introduced to help them take part in their education on the same basis as other students. What is 'reasonable' very much depends on a particular situation, but an example would be providing hearing aids.

Harassment

This happens when a disabled person is treated in a way that makes them feel humiliated, offended or degraded. For instance, a teacher shouting at a pupil for not paying attention when their disability makes it hard for them to concentrate.

Victimisation

When someone treats your child badly because you have complained about discrimination, this is known as victimisation. A school that suspends a disabled child because their parents have made a formal complaint about harassment could be accused of victimisation.





Making a claim: disability discrimination

If you feel your child has been treated unfairly because of their disability, you can make a claim for discrimination.

Step 1

Establish what type of disability discrimination has taken place.

Step 2

Make a formal complaint to the nursery, school or college – explain how you think your child has been discriminated against and what action you expect them to take to remedy the situation.

Step 3

Escalate your complaint – if you are not satisfied with how they have responded, you could:

- Complain to the Department for Education (DfE)
- Complain to Ofsted
- Make a legal claim for disability discrimination

Before taking Step 3, you may wish to consider what more the education setting could be doing to help your child, whether it could provide more SEN support, or whether you need to apply for an EHC assessment or get an existing plan reviewed.

If you decide to make a claim for disability discrimination, this will be heard by the SENDIST.

This tribunal will deal with a claim against a school of any type (state-funded or independent), or a maintained nursery.

However, a claim relating to a private nursery, further education college or local authority, would be heard in a County Court.

If a nursery, school, college or local authority falls foul of disability discrimination laws, they can be ordered to take a number of actions. For example, they might be told to train staff, change their policies, make reasonable adjustments or, in the case of a permanent exclusion, re-admit that child or young person.



How we can help

As a specialist team of solicitors, we understand just how challenging this field of law is and how important SENDIST and judicial review appeals are to you and your child.

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

We can assist and be instructed in the following areas:

- Appealing a refusal to undertake an Education Health Care Needs Assessment
- Appealing a refusal to issue an EHCP
- Appealing the contents of an EHCP
- Appealing a refusal to undertake a reassessment
- Appealing a decision to cease to maintain an EHCP
- Judicial review
- Disability discrimination claims

Ready to get the support
your child needs?

[Email Thomas](#)

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