



IPSEA

Independent Parental Special Education Advice

Everything is new – or is it?

The new SEN Legal
Framework

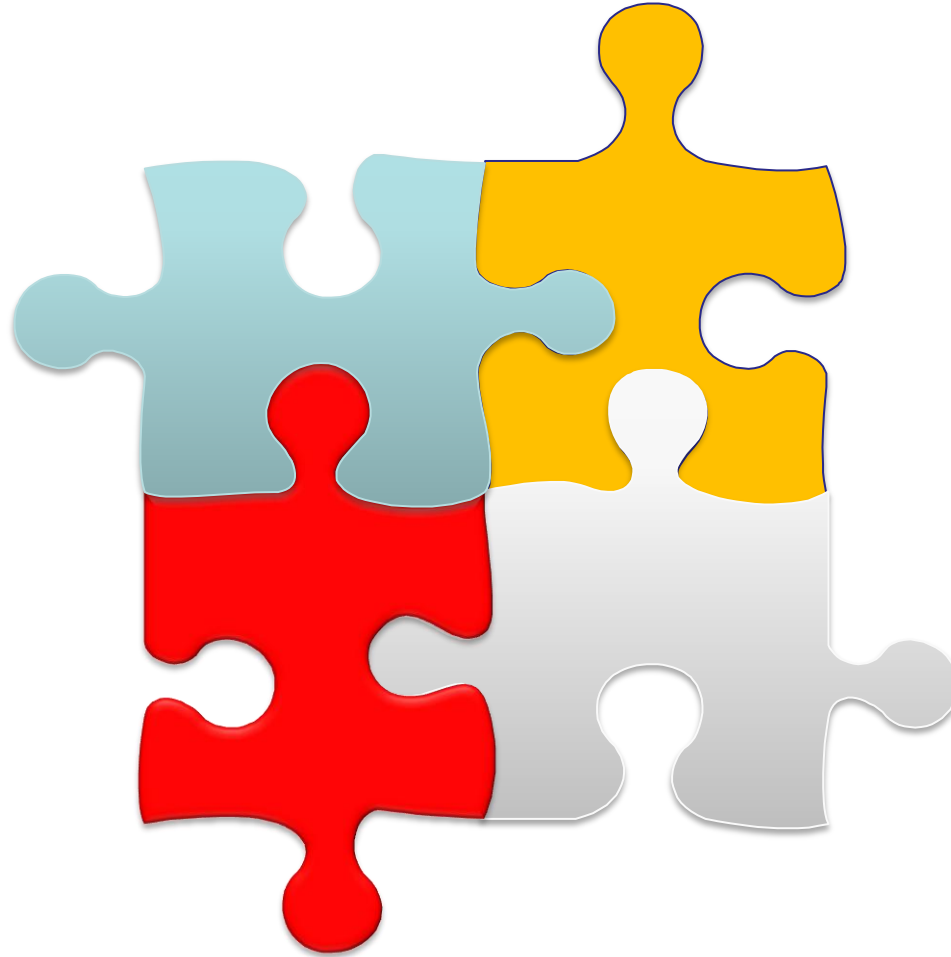
What the “old” system looked like?



The children we actually have?



What is the new system aiming to do?



Birds eye view

- SEN law: 0 – 25 years
- Strategic co-operation between services
- Local offer
- Joined up plans across education, health and care
- Streamlined assessments
- Greater choice of placement for parents to request that an LA must name (unless they can prove otherwise)
 - Academies
 - FE Colleges
 - Non maintained/ s.41 schools
- Co-production with families (although only mentioned once in the C of P)
- Personal budgets and direct payments
- Greater initial responsibility on schools

Moving from old to new?

Slowly ...

1st September 2014

- 1st September 2014 saw the change to the SEN law which has applied for two decades with the implementation of Part 3 of the Children and Families Act 2014 (“**C & F Act 2014**”)
- But the changes will not happen all at once
- Until 1st April 2018 we will have a period of **Transition**

A year to implement SEN Support

- Most children with SEN do not have statements and will not have plans – these are the children who were being supported in schools on SA and SA+
- To be replaced by “**SEN Support**”
- Schools have been given an academic year to phase in the changes (Para 2.5 of Transitional guidance Sept 2015 at the latest)

Children with Statements

- Parents of children with statements of SEN are **not** be able to request an EHC needs assessment under the C & F Act 2014
- LA will determine when they will transfer
- The “old” law - Education Act 1996 (“**EA 1996**”) and its related regulations and guidance will still apply until they transition...

Transition from Statements

- Each local authority will determine the pace of transition
- The only “must” duty on LAs for 2014/2015: to transition those with statements moving to post 16 institutions
- Otherwise LA “expected” to prioritise those in phase transfer situations but up to the LA how they carry this out

The Transition Process

- Must include an EHC needs assessment
- Parents or young person must be invited to a meeting as part of process
- 2 weeks notice that transition will start
- 14 weeks from commencement to issuing an EHC plan – statutory time limit – if not met – breach of statutory duty by the LA
- Must include an EHC needs assessment

Young people with LDAs

- Young people with Learning Difficulty Assessments are able to request an EHC needs assessment **now**
- LA's should be prioritising them, recognising the lower level of protection given by a Learning Difficulty Assessment
- 20 week process as LA must first consider if they will carry out an EHC needs assessment

Worms eye view!

Getting the right educational support for your child

Definition & scope

New or different?

Where do you start?

- You will need a copy of the “**Special Educational Needs and Disability Code of Practice 2015**”
- The Code outlines the key information used by professionals to decide whether children and young people require support for their special educational needs and how such support is to be given
- Legal duty on LAs, governing bodies, schools, FE colleges, NHS and the SEND Tribunal to “have regard” to do what it says

What are the key areas of information in the Code?

- Duties on LAs to support, advise and listen to children, young people and parents
- How children/young people should be supported in schools
- How to identify, assess and provide for pupils with special educational needs
- The EHC needs assessment process
- EHC plans

Sources of SEN law

- **The C & F Act 2014 Part 3**
- **The SEN and Disability Regulations 2014 and the SEN (Personal Budgets) Regulations 2014**
- **Case law – old vs new**

Plus:

- **The new Code of Practice**

Section 19 principles – LA “must have regard” to

- a) the views, wishes and feelings of the child and his or her parent, or the young person;
- (b) the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions ...
- (c) the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions;
- (d) the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes.

LA responsibility & duty

Sections 22 and 24

- LA must identify all children/young people who have or may have SEN (s 22)
- LA is responsible for the child or young person if in the in the LA's area and have been identified by LA or “brought to the LA's attention” by any person, as some who has or may have SEN (s 24)

Integration of Education, Health & Care Sections 25 - 28; CoP ch.3

- LA must promote integration of educational provision, social care provision and health care provision (s 25)
- LA must make “Joint commissioning arrangements” with the health service (s 26)
- LA must consider the extent to which educational provision and social care provision in the area is “sufficient” (s 27)
- Duties to co-operate with local partners (s 28)

All strategic planning duties only

Definitions & scope

Sections 20 and 21

- Definitions of SEN, SEP, learning disability are the same
- Distinction between children and young people
 - Young people over compulsory school age (16) but under 25
 - Legal entitlements automatically transfer from parent to the young person
 - Legislation applies to children and young people
- Lack of capacity – section 80 – parent can act unless a different person appointed as Deputy

Special Educational Needs

Definition

C & F Act 2014 section 20(1)

“A child or young person has SEN if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her”

Special Educational Provision

C & F Act 2014 section 21(1)

“educational or training provision that is additional to, or different from, that made generally for others of the same age”

- Mainstream schools
- Mainstream post 16 institutions **in England**

Changes for schools

New or different?

Basic structure of SEN legal responsibilities



LAs: absolute duty

Schools: best endeavours

Staff:
professional standards

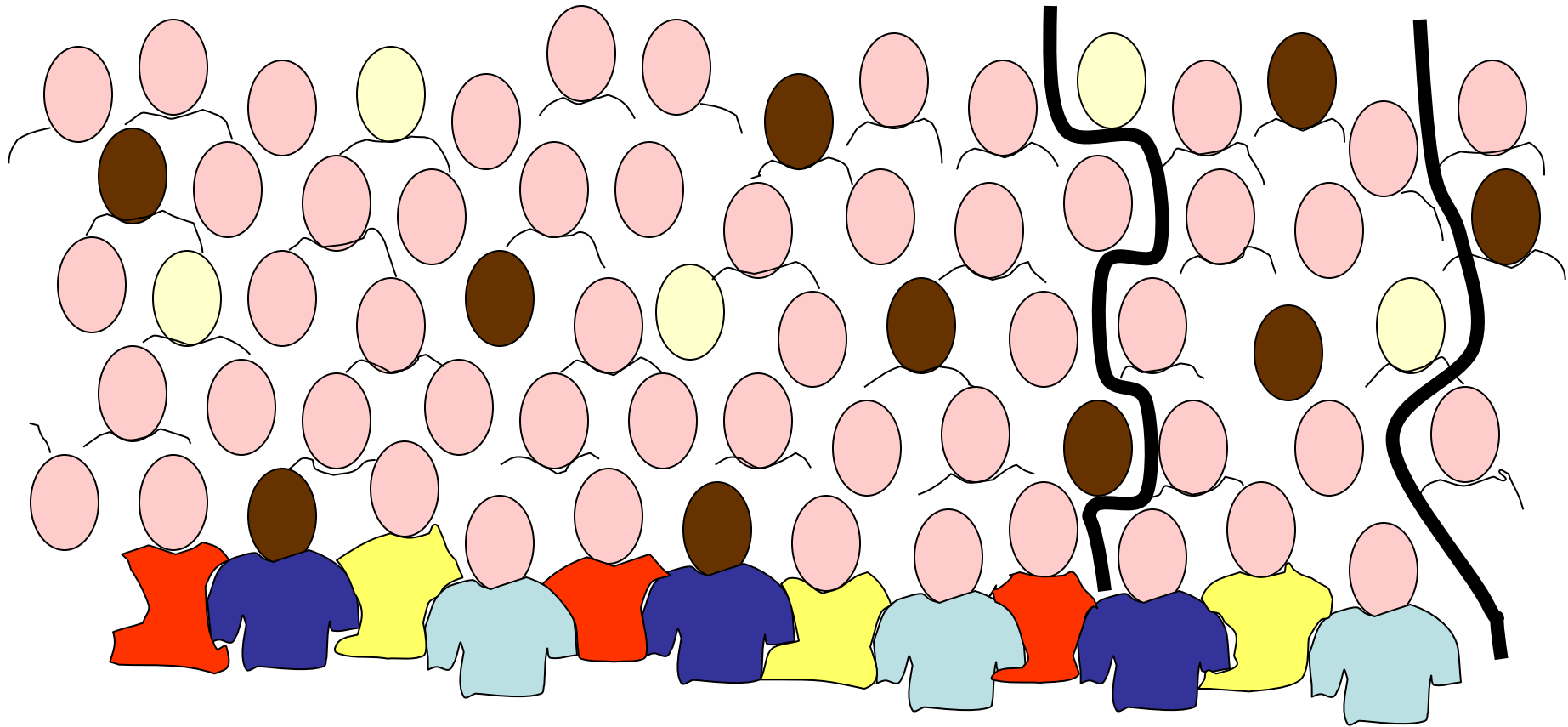
How are Special Needs met in Schools?

Mainstream Schools:

1. Support provided by school – “SEN Support” – registered as having SEN.
2. Education, Health & Care Plan (EHC plan)

Special Schools:

Local Authority secures a placement via an EHC plan (very limited exceptions)



School provisions

Sections 65-69, Chapter 5 & 6 Code

Requirements to:

- Have a SENCO – mainstream schools
- “Admit” pupil if named in EHC plan
- Ensure pupils with SEN/D engage with activities alongside pupils who do not
- Publish information on how they meet the needs of children with SEN – SEN Information report
- Inform parents if a child/YP has SEN

Governing body duties

section 66 & 67

- Proactive duty – mainstream schools/“*use its best endeavours to secure that the SEP called for by the pupil’s or student’s SEN is made*”
- Appoint a SENCO – qualified teacher working at the school – National SENCO award (if after 1 Sept 2009)
- Inform parents & YP where SEP being provided

SEN Information Report

s.69

Legal duty for all maintained schools/Academies to publish SEN Information on website – annually updated

Includes:

- Identifying SEN & assessing needs
- Assessing/reviewing progress
- Expertise amongst staff to support SEN
- Does not constitute a school's offer as such

SEN Support

New & different

“SEN Support” in School

- Those with SEN whose needs are met from the resources of a school/college
- Replaces School Action and School Action Plus
- Only one level
- Emphasis on graduated response
- Parents **must** be told if SEP is being made (section 68)

Code of Practice

- Principles are contained in Chapter 1 as well as the Introduction
 - Separate Chapter on early years – Chapter Five
 - Chapter for schools – Chapter Six
 - Chapter for FE – Chapter Seven
- (a lot of repetition between 5, 6 and 7)

Four areas of SEN - CoP 6.25

Mainstream schools/ colleges must plan to support needs across:

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

Does not mean that child's needs must be only in these areas

What about behaviour?

Code says

“difficult or withdrawn behaviour does not necessarily mean that a child has SEN. However, where there are concerns, there should be an assessment to determine whether there are any causal factors such as an underlying learning or communication difficulty.”

School support - CoP 6.5

“cycle of action”

1. **Assess** – clear analysis of needs – external support services
2. **Plan** – Interventions & support = expected impact on progress, development or behavior – clear date for review
3. **Do** – Class/subject teacher supported by SENCO
4. **Review** – Revise plan in consultation with parents

Involving specialists?

CoP 6.58

- *“less than expected progress despite evidence based support”*
- At any point but should always be where little or no progress over a sustained period of time or “substantially below” children/YP of the same age
- Parent’s should always be involved in this decision

Types of external support – CoP 6.61

- Educational Psychologist
- Child & Adolescent Mental Health Services (CAMHS)
- Specialist support teachers/services
- Therapists – SALT, OT, Physio

Local Offer

New & different

Local Offer

Section 30: CoP ch.4

C & F Act 2014 requires LA to:

“publish information ... it expects to be available in its area at the time of publication”

- Also outside its area

LO must cover:

- Education, Health & Social Care provision
- Other educational provision
- Training provision
- Travel
- Provision to prepare for adulthood/ independent living

Local Offer cont.

LA should have consulted children/YP and parents in constructing their Local Offer – and keep doing so!

Must contain information on:

- SEP provided in mainstream schools & post 16 institutions
- SEP in special schools & special post 16 institutions
- SEP secured by the LA in mainstream schools, mainstream post 16, PRU & alternative Academies
- Funding arrangements for SEN

NB: Creates NO duty on schools to deliver if they do not have the funds

An Education, Health & Care Plan - EHC plan

Why a EHC plan?

- A **legal document** which should specify details of a child's special educational needs and the support that will be necessary to meet those needs
- **Must** cover educational needs/SEP
- **May** cover Health and/or Social Care needs & provision
- Is only available to children/YP with SEN – not to those who have a disability but no SEN

Steps to getting an EHC plan

- 1. Request an EHC needs assessment of child or YP's SEN**
- 2. EHC needs assessment carried out by LA**
- 3. Draft EHC plan issued by LA – consult with parents & then potential school/ FE college**
- 4. Final EHC plan issued by LA**

Step 1 : Request EHC needs assessment: section 36(1)

- **EHC needs assessment** is of educational, health care & social care needs s.36(2)
- **Only** the LA can conduct an EHC needs assessment
- **Only** this kind of assessment can lead to an EHC plan being issued
- Request from child's parent, YP, school or post 16 institution – LA **must** respond within 6 weeks

Statutory Assessment of SEN

Legal test – s.36(8)

*The LA **must** secure an EHC needs assessment for the child or YP if ... the authority is of the opinion that –*

*(a) The child or YP has or **may** have SEN and*

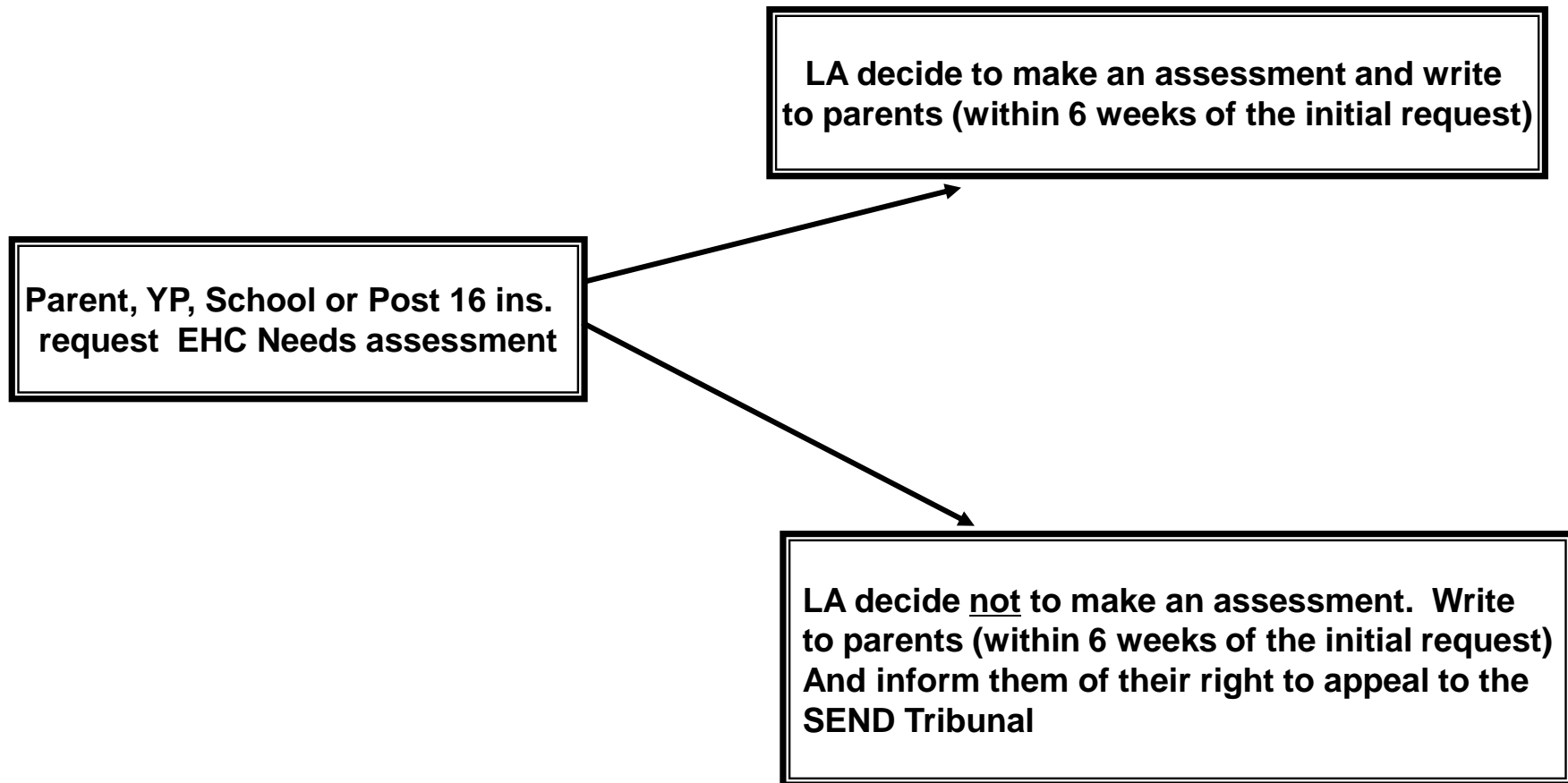
*(b) it **may** be necessary for SEP to be made for the child or YP in accordance with an EHC plan*

Duty to assess health care or social care needs?

Not clear?

- Automatically trigger an assessment of social care needs? (under the Children Act 1989)
- Automatically trigger an assessment of health care needs?

How EHC Needs assessment can begin



Refusal to carry out an EHC needs assessment?

1. Right to make an appeal to the Special Educational Needs and Disability Tribunal (SEND) – 2 months or one month from issue of mediation certificate if later – compulsory consideration of mediation certificate will be required
2. Collect/assess evidence
3. Code of Practice – chapter 9
4. SEND – <http://www.justice.gov.uk>
- 5. Get advice!**

Step Two: EHC needs assessment

Reg. 6 (1)

The LA **must** seek advice on **SEN/provision/outcomes**:

- (a) Child's parents or the young person
- (b) Head teacher or principal of school/post-16 settings that they are attending
- (c) Medical advice and information from a health care professional
- (d) Educational psychologist
- (e) Advice and Information in relation to social care
- (f) Advice and Information from **any other person LA thinks appropriate**
- (g) Advice and information in relation to prep for adulthood and independent living
- (h) **Any person** child's parent or young person **reasonably requests**

If HI and/or VI issues - specialist educationalist. **All of this applies equally to EHC needs assessment carried out as part of transition**

Exception to seeking new advice - Reg. 6(4)

“The local authority must not seek any of the advice referred to in paragraphs (1)(b) to (h) if such advice has previously been provided for any purpose and the person providing that advice, the local authority and the child’s parent or the young person are satisfied that it is sufficient for the purposes of an EHC needs assessment”.

EHC needs assessment

LA request advice from:

- **Parents**
- **Required professionals under Reg. 6(1)**
- **Professionals reasonably requested by parents/ YP**

LA must in this period ensure they:

- **Consult with child, parents or YP &**
- **Take into account views, wishes & feelings**
- **Engage & ensure participate in decisions**
- **Minimise disruption**

**Maximum 16 weeks after initial request for SA (not when the LA agreed to carry out SA)
the LA must write informing parents/ YP that
they do not intend to issue an EHC Plan and notify them of their
right to appeal to SEND Tribunal**

or

LA must have issued a draft EHC Plan to child's parents/ YP

Duty to issue an EHC Plan – Legal test section 37(1)

*“Where in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or YP in accordance with an EHC plan –
(a) the LA must secure that an EHC plan is prepared for the child or YP ...”*

Refusal to issue an EHC Plan?

- The statutory assessment process will have resulted in a lot of expert advice. The parent should read this carefully and try to ascertain why the LA believe that the child does not need an EHC plan
- Ensure the LA state clearly in writing why they are refusing
- Sometimes the LA will say that the child's needs can be met by the school through their budget. Ask your child's school what they think about this!

What next?

- Right to make an appeal to SEND – 2 months – or one month from issue of medication certificate if later - compulsory consideration of mediation
- Collect/assess evidence
- Code of Practice – chapter 9
- SEND – <http://www.justice.gov.uk>
- **Get advice!**

Step 3: Draft EHC plan: section 38

LA must now:

1. Send draft EHC Plan to child's parent or YP
2. Give them at least 15 days to “ make representations” – comment – on its contents
3. Ask them to request a particular school or other institution is named in the EHC plan
4. A draft EHC plan **must not** name a school or institution or specify a type of school or institution.

Making representations: Evidence

- Anything you want added/changed/taken out in the draft EHC plan needs to be supported by evidence
- The LA's evidence – the advice and information obtained by the LA during SA - must be set out in appendices to the draft EHC plan
- Parent or YP has the right to request a meeting with the LA within the 15 days

Step 4: Final EHC plan sections 39 & 40

- Issued within 20 weeks of initial request for SA of a child/YP's needs
- It must include the name of a school/Ins. and specify the type of school/Ins. the child or YP is to attend
- There will be a covering letter advising parents of right of appeal to SEND Tribunal

Contents of a EHC Plan: Educational Needs & Provision s.37(2), Reg. 12

Must specify:

- Special Educational Needs
- Outcomes sought for him/her
- Special Educational Provision required
- Views, interests & aspirations of the child & his/her parents or YP
- Where SEP is to be secured by direct payment the SEN & outcomes to be met by the DP

Contents of a EHC Plan: Health Care needs/provision s.37(3) & 42

Must specify:

- Any health provision reasonably required by the learning difficulties & disabilities which result in them having SEN
- **If** an EHC plan specifies Health care – over which NHS has a veto – then “responsible commissioning body” must arrange it

Contents of an EHC Plan – social care provision section 37 (2)

- For child or young person under 18, must specify any social care provision which must be made under section 2 of the CSDPA 1970; plus
- Any social care provision **reasonably required** by the learning difficulties & disabilities which result in them having SEN

No duty in the Act for this to be provided

Personal budgets & Direct Payments

Bill s.49; Personal Budget Regs

LAs **must** prepare a personal budget:

- In relation to an EHC plan
- Where a request has been made by a parent or YP
- **May** include details of a direct payment
- **Must** be set at a level that will deliver the provision specified in the plan
- Where a request is not met LA must set out reasons
- Request for a formal review - no means to challenge
- LA may not make a direct payment unless the HT or Principal agrees where provision in their setting

Appealing to SEND Tribunal

- Despite making representations to the LA, you may still find yourselves in disagreement with them regarding the educational contents of the EHC plan or the name of the school/Ins.
- If so, you should make an appeal to SEND Tribunal within 2 months of receiving the final EHC plan or one month of issue of mediation certificate

Challenging the Health or SC contents of an EHC plan?

- Cannot be taken to the SEND Tribunal
- Needs to be challenged via separate, existing routes;
 - **Social Care** via LA internal review process
 - **Health** via local responsible body's review process
- No single place to challenge across whole EHC plan – plans to trial limited powers at SEND Tribunal in September 2015

Overall time limits on LA from initial request for a SA:

- Maximum **6 weeks** to make decision whether or not to carry out a statutory assessment
- Maximum **16 weeks** to decide not to issue a EHC plan – no set time limit to issue a draft EHC plan
- Maximum **20 weeks** to issue a final EHC plan
- LA duty to make decisions “*as soon as is practicable*” Reg. 13(2)



Unleashed !

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DO YOU KNOW....

- What an EHC needs assessment is?
- How to request an EHC needs assessment?
- What type of evidence will be needed to obtain a statutory assessment?
- What happens during the assessment?
- What to do if the LA doesn't issue a EHC plan following assessment?
- What you need to do when you receive a draft EHC plan?

IF NOT...ASK ME NOW!

What makes a “good” EHC plan?

Structure of EHC Plan

CoP chpt. 9

- No standardised format of an EHC Plan
- 152 different varieties – 1 x per LA
- Lack of clarity/transparency
- Difficult to compare
- Difficult to advise & support parents, YP
- We are seeing some very poor examples

Contents of EHC plans – section A:

Must cover:

Views, Interests & aspirations of child & their parents or YP

Details:

Aspirations & goals
Play, health, schooling, independence, friendships, FE & future plans + employment

Contents of EHC plans – section B:

Must cover:

The child or YP's

**Special Educational
Needs**

Details:

ALL of the their SEN
must be included

Must be specified as
required by s. 37(2)

Contents of EHC plans – sections C and D:

- Section C
 - Health Care Needs which relate to the child or young person's special educational needs.
 - Social Care Needs which relate to their special educational needs or disability
- Section D

Contents of EHC plans – section E:

Must cover:

The **Outcomes** sought for the child or YP

Details:

- Range of outcomes over varying timescales
- Distinction between outcomes & provision
- Arrangements for monitoring progress – review & transitions arrangements
- Forward plans for key changes

Contents of EHC plans – section F:

Must cover:

The special educational provision required by the child or young person

Details:

- Specific & normally quantified
- How provision will support outcomes – including via personal budget
- Equipment
- Modifications/exclusions from National Curriculum
- Need for residential accommodation

Contents of EHC plans – section G and H:

Must cover:

Section G

Section H (1)

Section H (2)

Details:

Health Care Provision
(on which CCG has a
right of veto)

Social Care provision
required under CSDPA

Other social care
provision

Contents of EHC plans –

Section I:

The name & type of school, maintained nursery, post 16 institution or other institution or type of school or other institution to be attended by the child or YP

Section J:

Where there is a personal budget, the details of this & the outcomes it should support

Section K:

The advice & information gathered during the assessment (in appendices) should be listed

Specification

L v Clarke & Somerset CC [1998] ELR 129

“so specific and so clear as to leave no room for doubt as to what has been decided is necessary in the individual case. Very often specification of hour per week will no doubt be necessary and there will be a need for that to be done.”

Therapies in an EHC plan – section 21(5)

*“Health care provision or social care provision which **educates or trains** a child or young person is to be treated as special educational provision (instead of health care provision or social care provision)”*

Must therefore be specified in the Special Education Provision section of the EHC plan
= LA has a duty to provide/fund

Typical areas to consider:

1. SALT
2. OT
3. Physiotherapy
4. Specialist teacher input
5. Toileting/ self-help skills i.e. eating, drinking, PE
6. Home/ School communication
7. Hours of Individual support

Naming a school or Post 16 Ins. in an EHC plan

Maintained school or nursery, an Academy, an FE institution, a non-maintained special school or institution approved under s. 41

C & F Act 2014 s.39(4)

Burden on LA to name parents choice unless:

1. Unsuitable to the child's age, ability, aptitude or SEN
2. Incompatible with the provision of:
 - the provision of efficient education of others; or
 - efficient use of resources

Institutions approved under s.41

Sec of State can give approval for :

- Independent special schools
- Special Post-16 institutions

To be “subject” to a request to be named in an EHC plan – i.e. for the same rules to apply!

Right to a Mainstream Education – s.33(2) & (3)

A child or YP with an EHC plan must be educated in a mainstream school or mainstream post 16 ins. unless :

1. Parents don't wish it
2. Incompatible with the provision of efficient education of others and no reasonable steps can be taken to prevent this

Independent school (not approved under s.41)

Education Act 1996 s.9

“**making representations**” for that school

Burden on parents to prove:

1. The LA's own schools cannot meet their child's needs as detailed in the EHC plan
2. The Independent school can meet those needs
3. Cost

Residential School

- Law will depend on “type” of school/post 16 ins.
 - usually these are independent schools
- Need to establish educational reasons for a placement

Cannot take into account:

- Social care needs, i.e. effect of child’s disability on a family
- Medical needs outside those of child, i.e. ill health of parent

DO YOU KNOW...

- What a good EHC plan should contain?
- What information should be in separate sections of the EHC plan?
- What to do if you are not happy with the final EHC plan?

IF NOT...ASK ME NOW!

A EHC plan that “works”

How do you ensure it happens?

- **Governors duties**
- **Annual Review process**
- **Ceasing the EHC plan**

It needs to be up to date!

Governing body duties sections 66, 67 and 68

- Proactive duty (re: mainstream schools)
“use its best endeavours to secure that the SEP called for by the pupil’s or student’s SEN is made”
- Appoint a SENCO (mainstream school) – qualified teacher
- Inform parents & YP where SEP being provided

Annual Review of a EHC plan section 44

- Happens ... Annually!
- Process defined in CoP chapter 9
- Legal duty of the LA – school/ins.
hold the evidence gathering meeting
- School/ins. submits report on which LA
base their review
- Different from early or interim review

Preparing for the Review Meeting

LA has the duty to review an EHC plan & must secure a meeting to review the plan.
Can be delegated to HT or principal of school or Post 16 ins.

The following must be invited to the meeting & asked to provide advice & information:
Child's parent/ YP; provider of education;
LA SEN officer; Health care prof;
Social Care prof.

Reports must be copied to all people invited to the Review Meeting,
giving at least 2 weeks notice

Annual Review Meeting held

- Review the EHC plan
- Consider progress towards outcomes

After the Meeting

Review Report prepared within 2 weeks of the meeting and sends it to the LA, with copies to everyone Invited to the Review including the parents

Parents have an opportunity to send 'other information to LA

Propose amendments to the EHC plan

LA Review EHC plan in the light of the report and any other information or advice which they consider relevant. Within 4 weeks write to parents informing them of their decision to:

The EHC plan will continue with no changes

To cease to maintain the EHC plan

Right of appeal following Annual Review s.51(2) (e)

- If an LA decide not to amend an EHC plan following review they need to write to parents telling them of this decision and the reasons why
- Parents then have a right to appeal this decision to SEND Tribunal

The ending of an EHC plan

1. The LA can decide an EHC plan is “no longer necessary” and issue a **Cease to Maintain** notice under section 45

or

2. The EHC plan **lapses** – the YP leaves education or training

Implications for children/young people/parents?

