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Special Education Needs and Disability (SEND)

This factsheet explains key changes to the legal framework governing the provision of education, health and social care to children and young people living with disability and special needs. The below text discusses the SEND reforms and refers to The Children and Families Act 2014 – Part Three.

Why change was needed

Parents of children with special educational needs have historically struggled to gain access to all necessary services and support. There has been a lack of choice, control and consultation, and families have often faced a multitude of assessments. In addition, transition from children's to adult services has been difficult. The previous system was overcomplicated, adversarial and expensive with poor outcomes.

We now have a new approach to the provision of education, health and social care for children and young people living with disability, which joins up help and support across these areas. We are promised clear pathways for children from birth to 25 years with full involvement of parents and carers in the decision making process.

Key changes

Local Authorities ('LAs') and Clinical Commissioning Groups ('CCGs') are required to work together to commission services for a better integrated system focused on outcomes and working with children, young people, parents and partners in education, health and social care. Together, these groups must produce a 'local offer' of services to help families understand what is available.

A new Education, Health and Care Plan ('EHC Plan') replaces the previous system of 'statementing', and will reflect the child or young person's future plans as well as present needs.

A phased transition is in place for those already with statements and learning difficulty assessments. The Act is supported by a number of regulations and codes of practice.

Parental involvement

LAs are obliged to consider the views, wishes and feelings of the child or young person and his / her parents. They must ensure each party can participate fully in decision making. They must also provide all necessary information and support for children and young people and their families, to facilitate their development and achieve the best possible educational outcomes.

Identification

LAs must identify all the children and young people in their local area with (or who may have) special educational needs and disability. There is now a duty on health bodies, including CCGs and NHS Trusts, to notify the LA of any child or young person who they consider has special educational needs or a disability.

Joint commissioning

The Act establishes a clear duty on the part of LAs and partners to make joint commissioning arrangements for education, health and social care provision for children and young people with SEN and disability.

Southampton



Lymington



Richmond



London

These plans should now be in place throughout the UK, dealing with:

- Local offers
- Provision of services
- Co-ordinated assessment
- Education Health & Care Plans
- Personal budgets
- Information, advice and support
- Complaints procedures
- Mediation and dispute resolution

Joint commissioning arrangements cover services for 0-25 year olds with, or without, EHC Plans. These include specialist support and therapies like clinical treatments and medications delivery, speech and language therapy, assistive technology, personal care, mental health services, occupational therapy, rehabilitation, physiotherapy, nursing support, specialist equipment, wheelchairs, continence services and emergency provision.

Assessments

An assessment request can be made by a parent, young person, a school or post-16 institution. It can also be triggered by a child being identified by or brought to the attention of the LA.

The EHC Needs Assessment appraises educational, healthcare and social care needs all together.

Healthcare

There is only a requirement to specify those healthcare needs relating to education. CCGs may choose to include other unrelated requirements, for example a long-term condition which might need management in a special educational setting. The code of practice suggests healthcare provision may include specialist support and therapies such as medical treatments and delivery of medications, occupational therapy and physiotherapy, a range of nursing support, specialist equipment, wheelchairs and continence supplies.

The LA and CCG may also choose to specify other healthcare provision not linked to learning difficulties or disabilities but which should sensibly be coordinated with other services in the EHC Plan.

Social care

The EHC Plan requires specification of needs relating to special education and those requiring provision under section two of the Chronically Sick and Disabled Persons Act 1970 including:

- Practical assistance in the home
- Assistance in obtaining recreational and educational facilities at home and outside
- Assistance in travelling to facilities
- Adaptations to the home
- Facilitating the taking of holidays

The LA may also specify other social care needs not linked to the child or young person's SEN, or to a disability.

The EHC Plan can also list services for parent carers of disabled children following an assessment of needs.

There is also a section to list services not under section 2 of the Chronically Sick and Disabled Persons Act 1970, like residential short breaks and services provided to children arising from their SEN, but unrelated to disability.

Personal budgets

A family or young person will be able to request a personal budget when the LA is drafting their EHC Plan.

Department of Education guidance makes it clear that a personal budget is a sum of funding available for children and young people where it is clear they need additional provision beyond that available to most children and young people through local services.

A personal budget could be used, for example, to employ a support worker for additional help at school, special equipment or therapies.

Resolving disputes

There is a complex system for resolving disputes with various avenues for complaint or redress. Mediation can be about SEN, or the health and social care elements of an EHC Plan. No tribunal appeal can take place until there has been a discussion with a mediation adviser, unless the appeal is solely about the name of the school or college etc.

Tribunals will hear appeals in relation to EHC Needs Assessments and Plans and can cover:

- LA decision not to carry out EHC assessment or re-assessment
- The description of SEN
- The SEN provision specified
- A school or other institution specified in the EHC Plan
- Decision not to amend an EHC Plan following a review
- Decision to cease an EHC Plan

The tribunal does not deal with personal budgets or health and social care needs unrelated to education.

Legal Representation

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- Disability discrimination
- Healthcare law
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- Employment
- Housing issues

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- Children and young people with disabilities in need of special education and ongoing care
- Families and carers
- Court appointed deputies
- Charities & support groups
- Schools and educational establishments

If you or a family member require advice and support, we can provide an initial assessment of your case entirely free of charge please contact us on **023 8071 8000** or email tim.spring@mooreblatch.com

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