

#3 Carrying out an Education Health and Social Care Assessment (EHC)

ASK THE JUDGE



Frequently asked questions for parents and young people

These Frequently Asked Questions have been prepared to provide a summary of the key duties on local authorities following the introduction of the Children and Families Act 2014. They are not to be treated as providing legal advice and should be used as a guide only.

If legal advice is required contact SEN4You directly on 01908 082422 or Advice@SEN4You.co.uk

KEY PROVISIONS

- Sections 20, 21 and 36 Children and Families Act 2014
- The Education (Special Educational Needs and Disability 2014) Regulations
- Chapter 9 SEN and Disability Code of Practice 2014

What is an EHC Assessment?

An EHC Assessment is an assessment of a child's/young person's education, health and social care needs. It is requested under s 36(1) of the Children and Families Act 2014.

When must an EHC Assessment be carried out?

A local authority must carry out an assessment if the child/young person has a learning difficulty or disability which calls for Special Educational Needs (SEN) provision to be made for them.

What is a learning difficulty?

A learning difficulty is where a child/young person is shown to have a **significant difficulty** in learning when compared to children of the same age.

Alternatively, the child may have a **disability which prevents or hinders him or her from making use of facilities** of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

What does SEN provision mean?

SEN provision means support that is **otherwise different or additional** to that reasonably provided for in a mainstream school/college.

If a child/young person has a learning difficulty and requires SEN provision does the local authority have to carry out an EHC Assessment?

No. Having identified that the child has "special educational needs and requires special educational needs provision", a local authority will only have to carry out an assessment if it is **necessary** to do so. Before determining whether it may be necessary for special educational provision to be made for the child, it **must** consult the child's parent or the young person as soon as practicable after the request being made, or as soon as the local authority becomes responsible for the child or young person.

It is likely to be necessary to carry out an assessment if, on a balance of probabilities, the local authority is required to provide the educational setting with additional resources.

What if a child/young person has English as an Additional Language – does this mean they have a learning difficulty?

No. A child does not have SEN on account of the fact that they have English as an additional language.

Who can request an EHC Assessment?

The following people have a specific right to ask a local authority to conduct an education, health and care needs assessment for a child or young person aged between 0 and 25:

- The child's parent;
- A young person over the age of 16 but under the age of 25; and
- A person acting on behalf of a school or post-16 institution (this should ideally be with the knowledge and agreement of the parent or young person where possible).

Can a young person ask for an EHC Assessment if they have been detained?

Yes. Children and young people aged 10–18 in youth custodial institutions also have the right to request an assessment for an EHC Plan. The child's parent, the young person themselves or the professionals working with them can ask the home local authority to conduct an EHC needs assessment while they are still detained.

If the local authority is considering initiating an assessment, do they have to tell anyone?

Yes. Where the local authority considers that special educational provision may need to be made through an EHC Plan and is considering whether an EHC needs assessment is necessary, it **must** notify:

- The child's parent or the young person;
- The health service (the relevant Clinical Commissioning Group (CCG) or NHS England where it has responsibility for a child or young person);
- Local authority officers responsible for social care for children or young people with SEN;
- Where a child attends an early years setting, the manager of that setting;
- Where a child or young person is registered at a school, the head teacher (or equivalent);
- Where the young person attends a post-16 institution, the principal (or equivalent).

Does the local authority have to provide parents/ young person with support in respect of the assessment process?

Yes. The local authority must arrange for the child and his/ her parent or the young person to be provided with advice and information relevant to the child or young person's SEN. Support could be provided through the services offered by Parent Partnership or through the support of an independent facilitator.

What factors should the local authority look at when deciding whether it is necessary to carry out an assessment?

In considering whether an EHC needs assessment is necessary, the local authority should consider whether there is evidence that despite the early year's provider, school or post-16 institution having taken relevant and purposeful action to identify, assess and meet the SEN of the child or young person, the child or young person has not made expected progress.

To inform their decision the local authority will need to take into account a wide range of evidence, and should pay particular attention to:

- Evidence of the child or young person's academic attainment (or developmental milestones in younger children) and rate of progress;
- Information about the nature, extent and context of the child or young person's SEN;
- Evidence of the action already being taken by the early years provider, school or post-16 institution to meet the child or young person's SEN;
- Evidence that where progress has been made, it has only been as the result of much additional intervention and support at a sustained level over and above that which is usually provided;
- Evidence of the child or young person's physical, emotional and social development and health needs, drawing on relevant evidence from clinicians and other health professionals and what has been done to meet these by other agencies; and
- Where a young person is aged over 18, the local authority must consider whether the young person requires additional time, in comparison to the majority of others of the same age who do not have SEN, to complete their education or training. Remaining in formal education or training should help young people to achieve education and training outcomes, building on what they have learned before and preparing them for adult life.

Are there any timescales for considering the request for an EHC assessment?

Yes. Local authorities must respond to any request for a statutory EHC assessment within a maximum of six weeks.

When do the timescales start?

When the local authority receives the request for an EHC Assessment, the statutory timescales will begin. They cannot be delayed to wait for further information to support the request.

Does the local authority have to tell anyone else about a request for an assessment when it is received?

Yes. If the local authority determines that it is considering securing an EHC needs assessment it must inform:

- The responsible commissioning body;
- The officers of the authority who exercise the authority's social services functions for children or young people with SEN;
- In relation to a child:
 - I. If the child is a registered pupil at a school, to the head teacher (or equivalent position) of that school, or
 - II. If the child receives education from a provider of relevant early years education to the head of Special Educational Needs in relation to that provider; and

- In relation to a young person:
 - I. If the young person is a registered pupil at a school, to the head teacher (or equivalent position) of that school, or
 - II. If the young person is a student at a post-16 institution, to the principal (or equivalent position) of that institution.

What happens if the local authority decide an assessment is not “necessary”?

Where a local authority determines that it is not necessary for special educational provision to be made it **must** notify the child’s parent or the young person as soon as practicable, but in any event **within six weeks** of receiving a request for an EHC needs assessment. It must also notify any other parties that it has consulted.

The local authority must include in their notification to parents/young people of:

- Their right to appeal matters within the EHC Plan;
- The time limits for doing so;
- The requirement for them to consider mediation should they wish to exercise that right of appeal; and
- The availability of:
 - (i) Disagreement resolution services; and
 - (ii) Information and advice about matters relating to the SEN of children and young people.

What happens if the local authority decides to carry out an assessment?

Where an EHC Assessment is being conducted, the local authority must gather advice from relevant professionals about the child or young person’s education, health and care needs, desired outcomes and special educational, health and care provision that may be required to meet identified needs and achieve desired outcomes.

This will include seeking advice from the following:

- Advice and information from the child’s parent or the young person. The local authority must take into account his or her views, wishes and feelings;
- Educational advice and information from the headteacher or principal of the early years provider, school or post-16 or other institution attended by the child or young person. Where this is not available (for example because the child or young person does not attend an educational institution) the authority should seek advice from a person with experience of teaching children or young people with SEN;
- If the child or young person is either visually or hearing impaired, or both, the educational advice and information must be given after consultation with a person who is qualified to teach pupils or students with these impairments;
- Medical advice and information from health care professionals with a role in relation to the child’s or young person’s health (see the section later in this chapter on agreeing the health provision in EHC Plans);
- Psychological advice and information from an educational psychologist who should normally be employed or commissioned by the local authority. The educational psychologist should consult any other psychologists known to be involved with the child or young person;
- Social care advice and information from or on behalf of the local authority, including, if appropriate: children in need or child protection assessments, information from a looked after child’s care plan, or adult social care assessments for young people over 18. In some cases, a child or young person may already have a statutory child in need or child protection plan, or an adult social care plan, from which information should be drawn for the EHC needs assessment;



- Advice and information from any person requested by the child's parent or young person, where the local authority considers it reasonable to do so. For example, they may suggest consulting a GP or other health professional;
- Any other advice and information which the local authority considers appropriate for a satisfactory assessment, for example:
 - Early help assessments;
 - Any assessment undertaken by an early years provider;
 - In the case of children of members of the Armed Forces, from the Children's Education Advisory Service;
 - In the case of a looked after child, from the Virtual School Head in the authority that looks after the child and the child's Designated Teacher and the Designated Doctor or Nurse for looked after children;
 - From a youth offending team.

Is the local authority allowed to share the parental information with the other professionals they are seeking advice from?

Yes. The local authority must provide the person from whom advice is being sought with copies of:

- Any representations made by the child's parent or the young person, and
- Any evidence submitted by or at the request of the child's parent or the young person.

Are there timescales for carrying out the EHC assessment?

Yes, there are timescales that must be followed:

- The local authority has a maximum of six weeks to decide if it will initiate an EHC Assessment;
- When the local authority requests information as part of the assessment process, those supplying the information must respond within a maximum of six weeks from the request for assessment;
- If the local authority decides, following an assessment, not to issue an EHC Plan, it must inform the parents or young person within a maximum of 16 weeks from the date of the request for assessment;
- The parents or young person must be given at least 15 days to consider and provide views on a draft EHC Plan and ask for a particular school or other institution to be named in it.

Can we ask the local authority to share information with professionals carrying out the assessment?

Yes. The local authority must give to those providing advice copies of any representations made by the child's parent or the young person, and any evidence submitted by or at the request of the child's parent or the young person.

Can we ask the local authority to seek updated advice from a professional even if it has been recently provided?

No. The local authority must not seek further advice if such advice has already been provided (for any purpose) and the person providing the advice, the local authority and the child's parent or the young person are all satisfied that it is sufficient for the assessment process. In making this decision, the local authority and the person providing the advice should ensure the advice remains current.

If professionals across education, health and social care are asked for advice, do they have to provide it?

Yes they do. Where a local authority requests the co-operation of a body in securing an EHC needs assessment in accordance with section 31 of the Act, that body must comply with such a request within six weeks of the date on which they receive it.

However there are some exceptions. A body need not comply with the time limit if it is impractical to do so because:

- Exceptional circumstances affect the child, the young person or the child's parent during that six week period;
- The child, the child's parent or the young person are absent from the area of the authority for a continuous period of not less than four weeks during the six week period;
- The child or young person fails to keep an appointment for an examination or a test made by the body during that six week period.

What happens if the local authority decides not to issue an EHC Plan?

Following the completion of an EHC needs assessment, if the local authority decides that an EHC Plan is not necessary, it must notify the child's parents or young person, the early years provider, school or post-16 institution currently attended, and the health service and give the reasons for its decision.

This notification must take place as soon as practicable and at the latest within 16 weeks of the initial request or of the child or young person having otherwise been brought to the local authority's attention. The letter must provide details on mediation and how an appeal can be made.

The local authority should provide "feedback" collected during the EHC needs assessment process, including evidence from professionals, which the parents, young person, early years provider, school or post-16 institution may find useful. This information can then inform how the outcomes for the child or young person can be achieved through special educational provision made by the early years provider, school or post-16 institution and coordinated support from other agencies.