



#4 Issuing an Education, Health and Care (EHC) Plan

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 37- 47 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 Education, Health and Care (EHC) Plan?

An EHC Plan is a document specifying:

- The child's or young person's special educational needs (SEN);
- The outcomes sought for him or her;
- The special educational provision required by him or her;
- Any health care provision reasonably required by the learning difficulties and disabilities which result in him or her having SEN;
- In the case of a child or a young person aged under 18, any social care provision which must be made for him or her by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970;
- Any social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having SEN, to the extent that the provision is not already specified in the plan under the bullet point above.

An EHC Plan may also specify other health care and social care provision reasonably required by the child or young person.

The plan must also include:

- The name of the school, maintained nursery school, post-16 institution or other institution or the type of school or other institution to be attended by the child or young person;
- The views, interests and aspirations of the child and his parents or the young person;
- Where any special educational provision is to be secured by a direct payment, the SEN and outcomes to be met by the direct payment.

When should the local authority issue an EHC Plan?

An EHC Plan must be issued if it is "necessary" for the local authority to determine and arrange the child's SEN provision. In practice this means that the local authority is providing the child/young person's school or college with more provision/ resources than is available from within their own resources.

What factors are the local authority required to take into account when preparing the plan?

When preparing a child or young person's EHC Plan a local authority must:

- Take into account the evidence received when securing the EHC needs assessment;
- Consider how best to achieve the outcomes to be sought for the child or young person.

What happens if the local authority decides it is necessary to issue an EHC Plan following an assessment?

Where a local authority decides it is necessary to issue an EHC Plan, it must notify the child's parent or the young person and give the reasons for its decision.

The local authority should ensure it allows enough time to prepare the draft plan and complete the remaining steps in the process within the 20 week overall time limit within which it must issue the finalised EHC Plan.

What is the layout of an EHC Plan?

EHC Plans must include the following sections, which must be separately labelled from each other using the letters below.

Section A: The views, interests and aspirations of the child and his or her parents or the young person.

Section B: The child or young person's SEN.

Section C: The child or young person's health needs which are related to their SEN.

Section D: The child or young person's social care needs which are related to their SEN.

Section E: The outcomes sought for the child or the young person, including outcomes for adult life. The EHC Plan should also identify the arrangements for the setting of shorter term targets by the early years provider, school, college or other education or training provider.

Section F: The special educational provision required by the child or the young person.

Section G: Any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN, and where an Individual Health Care Plan is made for them, that Plan.

Section H1: Any social care provision which must be made for a child or young person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970.

Section H2: Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN. This will include any adult social care provision being provided to meet a young person's eligible needs (through a statutory care and support plan) under the Care Act 2014.

Section I: The name and type of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person and the type of that institution (or, where the name of a school or other institution is not specified in the EHC Plan, the type of school or other institution to be attended by the child or young person).

Section J: Where there is a Personal Budget, the details of how the Personal Budget will support particular outcomes, the provision it will be used for including any flexibility in its usage and the arrangements for any direct payments for education, health and social care.

Section K: The advice and information gathered during the EHC needs assessment must be attached (in appendices). There should be a list of this advice and information.

In addition, where the child or young person is in or beyond year 9, the EHC Plan must include (in sections F, G, H1 or H2 as appropriate) the provision required by the child or young person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society.

Who takes responsibility for the EHC Plan?

The local authority is responsible for the educational provision set out in the EHC Plan and for maintaining the plan.

What are outcomes in the EHC Plan?

Outcomes underpin and inform the detail of the EHC Plans. EHC Plans must specify the outcomes sought for a child or young person be focused on **education and training, health and care outcomes** that will enable children and young people to progress in their learning and, as they get older, to be well prepared for adulthood.

How are outcomes determined and agreed?

An outcome can be defined as the benefit or difference made to an individual as a result of an intervention. It should be personal and not expressed from a service perspective; it should be something that those involved have control and influence over, and while it does not always have to be formal or accredited, it should be specific, measurable, achievable, realistic and time bound (SMART).

The EHC Plan should also specify the arrangements for setting shorter term targets at the level of the school or other institution where the child or young person is placed.

Should the local authority ensure that the outcomes relate to the wishes of the child/young person?

Yes. When agreeing outcomes it is important to consider both what is important to the child or young person – what they themselves want to be able to achieve – and what is important for them as judged by others with the child or young person's best interests at heart.

Does the special educational needs provision contained in the EHC Plan need to be specific and quantified?

Yes. EHC Plans must set out clearly the special educational provision that will enable the outcomes to be achieved.



Is there any duty on health to provide provision contained within an EHC Plan?

Each Clinical Commissioning Group (CCG) will determine which services it will commission to meet the reasonable health needs of the children and young people with SEN for whom it is responsible. These services should be described in the Local Offer.

Where relevant local clinicians, such as community paediatricians, will participate in the development of the child's or young person's EHC Plan.

CCGs **must** agree the health services in the plan, even though decisions may be made by a health professional, such as the designated health officer.

Can we expect health or social care provision to be considered to be educational?

Health or Social Care provision is considered to be educational if it educates or trains a child/young person. If it meets these requirements then it should be included in Section F of the EHC Plan. If it is included in this section ultimate responsibility for delivering it rests with the local authority.

What if there is a dispute between health and education over the classification of the provision?

Decisions about whether health care provision or social care provision should be treated as special educational provision must be made on an individual basis.

What if health or social provision identified in Sections G and H is not delivered?

Where the health authority or social care have agreed to insert provision in Sections G and H they will be responsible for ensuring that it is delivered and must commission it if it is not provided.



The local authority has agreed to issue an EHC Plan. What happens next?

The local authority is required to prepare the plan and must consider the evidence from the EHC assessment and the views of the parents and young person.

The local authority must send the draft EHC Plan (including the appendices containing the advice and information gathered during the EHC needs assessment) to the child's parents or young person and give them at least 15 calendar days to give views and make representations on the content.

When the local authority sends the draft EHC Plan:

- The local authority must notify the child's parent or the young person that during this period they can request that a particular school or other institution, or type of school or other institution, be named in the Plan. The draft Plan must not contain the name of the school, maintained nursery school, post-16 institution or other institution or the type of school or other institution to be attended by the child or young person (see below);
- The local authority must advise the child's parent or the young person where they can find information about the schools and colleges that are available for the child or young person to attend, for example through the Local Offer;
- The local authority should also seek agreement of any Personal Budget specified in the draft Plan.

Should all of the advices gathered from the EHC assessment be sent with the draft plan?

Yes. The advice and information obtained must be set out in appendices to the EHC Plan (Section K of the EHC Plan).

Can we request a meeting with the local authority once we have received the draft EHC Plan?

Yes. The local authority must make its officers available for a meeting with the child's parent or young person on request if they wish to discuss the contents of the draft EHC Plan.

What happens when the local authority issues a final EHC Plan?

A local authority must send the finalised EHC Plan to:

- The child's parent or to the young person;
- The governing body, proprietor or principal of any school or other institution named in the EHC Plan; and
- To the responsible commissioning body.

These steps must be undertaken as soon as practicable, and in any event within 20 weeks of the local authority receiving a request for an EHC needs assessment.

Are there any exemptions to the time limits?

Yes, the 20 week time limit may be extended only if one of the following occurs during the process:

- The authority has requested advice from the head teacher or principal of a school or post-16 institution during a period beginning one week before any date on which that school or institution was closed for a continuous period of not less than four weeks from that date and ending one week before the date on which it re-opens;
- The authority has requested advice from the head of SEN in relation to, or other person responsible for, a child's education at a provider of relevant early years education during a period beginning one week before any date on which that provider was closed for a continuous period of not less than four weeks from that date and ending one week before the date on which it re-opens;
- Exceptional personal circumstances affect the child or his parent, or the young person during the time period referred to in paragraph (1); or
- The child or his 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 time period referred to in paragraph (1).

What information should we expect with the final EHC Plan?

The local authority must notify 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.

Can the local authority share the EHC Plan without the parent or young person's permission?

An EHC Plan cannot be disclosed without the child or young person's consent except:

- To persons to whom, in the opinion of the local authority concerned, it is necessary to disclose the EHC Plan in the interests of the child or young person;
- For the purposes of any appeal under the Act;
- For the purposes of educational research which, in the opinion of the local authority, may advance the education or training of children or young persons with SEN, if, but only if, the person engaged in that research undertakes not to publish anything contained in, or derived from, an EHC Plan otherwise than in a form which does not identify

any individual including, in particular, the child concerned and the child's parent or the young person;

- On the order of any court or for the purposes of any criminal proceedings;
- For the purposes of any investigation under Part 3 of the Local Government Act 1974 (investigation of maladministration);
- To the Secretary of State when he requests such disclosure for the purposes of deciding whether to:
 - (i) Give directions or determinations (for any purpose), or
 - (ii) Make an order under section 496, 497 or 497A of the Education Act 1996.
- For the purposes of an assessment of the needs of the child or young person with respect to the provision of any statutory services for him or her being carried out by officers of an authority by virtue of arrangements made under section 5(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986;
- For the purposes of a local authority in the performance of its duties under sections 22(3)(a), 85(4)(a), 86(3)(a) and 87(3) of the Children Act 1989;
- To Her Majesty's Chief Inspector of Education, Children's Services and Skills, exercising the right to inspect and take copies of a statement in accordance with section 10(1)(e) of the Education Act 2005 and section 140(2)(a) of the Education and Inspections Act 2006;
- To a Young Offender Institution for the purposes of the performance of its duties under rule 38 of the Young Offender Institution Rules 2000;
- To a Secure Training Centre for the purposes of the performance of its duties under rule 28 of the Secure Training Centre Rules 1998.

A child may consent to the disclosure of an EHC Plan for the purposes of this regulation if his or her age and understanding are sufficient to allow him to understand the nature of that consent.

If a child does not have sufficient age or understanding to allow him to consent to such disclosure, his parent may consent on his behalf.

The arrangements for keeping a child or young person's EHC Plan must be such that they ensure, so far as is reasonably practicable, that unauthorised persons do not have access to them.