

Rights for parents and young people

Under the new reforms, children, young people and parents will have new rights to be more closely involved in various aspects of the new SEN system under a general principle to support this group (*for more information about this new right, see our factsheet: 'Overview of the reforms'*). In particular, parents and, for the first time, young people over the age of 16 will have a new enhanced role in decisions about individual and local support for children and young people with special educational needs and disabilities (SEND).

This factsheet sets out what rights young people and parents have over and above the aforementioned general principle. These are things that **must** happen. This includes both new rights and existing rights that have been carried over from the old system. *For further information about any of the things mentioned in this document, see out factsheet: 'Overview of the reforms'*.

Young people

When a young person reaches the end of compulsory school age (16), it is they who local authorities and others should normally engage directly with, rather than their parent.

Parents **should**, however, continue to be involved in discussions in the vast majority of cases.

Young people's new rights are:

- The right to request an assessment for an EHC Plan;
- The right to make representations about the content of their EHC Plan;
- The right to request a particular setting is named in their EHC Plan;
- The right to request a personal budgets for elements of an EHC Plan; and
- The right to appeal to the First-tier Tribunal (SEN and Disability) about decisions concerning an EHC Plan.

Information

Children, young people and parents must be provided with the information necessary to enable them to participate in discussions and decisions about their support. This could include information on local policy and practice, personal budgets, parent carer support groups and additional support such as Independent Supporters (*for more information on Independent Supporters, see our factsheet: 'Overview of the reforms'*).

This information will be set out in the local offer (see 'Local support' section below) and must be such that children and young people can access it separately from their parents. It must be available in accessible formats, such as easy read.

Local support

Reviewing local support

Local authorities must consult children, young people and parents when reviewing local educational, training and social care provision. There is a duty on local authorities and health bodies to review the local provision to see if it meets the needs of children and young people with SEN and Disabilities in the area, including how it helps young people prepare for adulthood.

Children, young people and parents must be involved in decisions about what services are commissioned at a local level in order to give “useful insights into how to improve services and outcomes”.

The local offer

Local authorities must place children, young people and parents at the centre of their planning when developing and reviewing the local offer.¹ This includes planning the content of the local offer, deciding how to publish it and in reviewing it.

In reviewing the local offer, parents and young people have a right to submit comments about the content of the local offer (including the quality of local services and any gaps in provision), how accessible the information in the local offer is, and the process by which the local offer has been developed or reviewed. These comments must be published by the local authority at least annually (unless they are inappropriate) along with their response to them, including the action they intend to take to address the comments made.

Education settings

Early years providers, schools and colleges should ensure that decisions they make are informed by the insights of children, young people and parents

Maintained nursery schools and mainstream schools must:

- use their “best endeavours” to make sure a child with SEN gets the support they need (this duty also applies to post-16 settings – see below for the list of what this incorporates);
- that a child or young person with SEN engages in the activities of the school alongside those who don’t have SEN;
- provide a Special Educational Needs Coordinator (SENCO); and
- inform parents when they are making special educational provision for a child

Presumption for inclusive education

Children and young people with SEN have a right to mainstream education.

¹ The local offer must include information about the local education (including training and Higher Education), health and social care support available to children and young people with SEN and Disabilities, including information about support available to help young people prepare for adulthood. This information is for both those with and without an EHC Plan. [See our factsheet: ‘Overview of the reforms’ for more information.](#)

Those children and young people with SEN but without an EHC Plan must be educated in a mainstream setting (and a mainstream setting must not refuse to admit them because they do not feel able to cater for their needs or because they do not have an EHC Plan). The exceptions to this are:

- where they are admitted to a special school or special post-16 institution to be assessed for an EHC Plan (as long as the parent or young agrees to this);
- where they are in a hospital and admitted to a special school which is established in a hospital; or
- where they are admitted to a special academy (including a special free school) that is allowed to admit children or young people with SEN but no EHC Plan (as long as the parent or young agrees to this). A special academy will have to specify a type of SEN for which they will be able to cater, if they child or young person has no EHC Plan. They will only be able to admit those children and young people with that type of SEN.

A child or young person with an EHC Plan must go to a mainstream setting unless:

- they or their parents do not want this (e.g. would prefer for them to go to a special school instead);
- the mainstream setting would not be able to meet the person's needs;
- it would impact on the education of others (the children and young people with whom the individual with a plan will directly come into contact with on a regular day-to-day basis); or
- it would not be an efficient use of resources.

Where a nursery, school or college is named in a plan, a child or young person has a right to be admitted to it.²

If a young person has an EHC Plan, they have a right to free education and colleges must not charge tuition fees for these individuals.

Information

Young people and parents have a right to have access to information about their local schools:

- Schools must publish detailed information about how they identify, assess and support pupils with SEN as part of an 'SEN information report' (the full list of things that the report must include, is on page 93 of the draft SEN Code of Practice:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304534/Code_of_Practice_Draft.pdf). This will be signposted to in the local offer.
- Pupils from Year 8 to Year 13 have a right to be provided with independent careers guidance from maintained schools and Pupil Referral Units (PRUs). There are similar rights for young people in 16-19 Academies and further education colleges.
- Parents have a right to be provided with an annual report from a school on their child's progress (this can be done more regularly).

² This applies to a maintained nursery school, maintained school, any form of academy or free school (mainstream or special), non-maintained special school, further education or sixth form college, or independent school/independent specialist college (where they have been approved for this purpose and appear on a list available to all parents and young people)

Equality Act 2010

Under the Equality Act, schools, early years providers, post-16 institutions, local authorities and others:

- must not directly or indirectly discriminate against, harass or victimise disabled children and young people;
- must make reasonable adjustments to ensure that disabled children and young people are not at a substantial disadvantage compared to their peers. These adjustments should be thought about in advance of when they are actually required;
- must take steps to eliminate discrimination, promote equality of opportunity and foster good relations between disabled and non disabled children and young people

Getting support

Identification of SEN

Anyone can bring a child or young person who they believe has or probably has SEN or a Disability to the attention of a local authority. A child's parents, young people, schools and colleges have specific rights to request an assessment for an EHC Plan and children, young people and parents should feel able to tell their school or college if they believe they (or their child) have, or may have, SEN.

Parents must be informed if someone thinks that their child has, or probably has, SEN. They must also be given the opportunity to discuss their opinion and be told about any voluntary organisations that might be able to provide advice or assistance.

SEN Support in schools or colleges

If SEN is identified in a child or young person and support is to be provided to them, parents have a right to be told that this is going to happen and to work with the school or college the child or young person is in to establish what support the individual needs.

Pupils with medical conditions have a right to have arrangements made by a school to support them (usually through an individual healthcare plan).

EHC Plans

Children, young people and parents must be engaged with throughout the assessment, planning and review process, and children should be involved as far as possible. This means:

- providing information and advice to inform the EHC assessment process
- providing information and feedback on the draft EHC Plan produced by a local authority
- providing views, wishes and feelings with regard to reviewing, reassessing and ceasing an EHC Plan

- helping to establish how best to minimise disruption in their family life during the EHC assessment and planning process (e.g. avoiding multiple appointments)
- having a right to receive impartial advice, information and support to enable them to take part effectively in the assessment and planning process
- local authorities discussing with them what information they are happy for the local authority to share with other agencies
- local authorities and other professionals not putting young people and parents under pressure to agree things more quickly than they feel comfortable with

Children and young people with a statement of SEN or a Learning Difficulty Assessment (LDA) can continue to receive one once the new system comes into force in September 2014. The process of moving them over to an EHC Plan can take place at any point over the next 3 and a half years (until April 2018) for a statement and over the next 2 years (until September 2016) for an LDA. The rights they currently have under statements/LDAs will continue to exist until they move across to an EHC Plan.

A child's parent and a young person between the ages of 16 and 25 have a right to ask the local authority to conduct an EHC assessment. Children and young people aged 10-18 in youth custody also have the right to request an assessment for an EHC Plan. When a local authority is considering conducting an assessment, it must let the child's parent or the young person know and must consult them as soon as possible to gather their views and provide them with relevant advice and information.

Assessment

A child or young person has a right to have an assessment of education, health and care needs conducted when a local authority if they may need support through a plan to meet their needs. The threshold for an EHC Plan is identical to that of a statement, so children and young people who receive a statement should automatically qualify to receive an EHC Plan. ***For more information about eligibility for an EHC assessment and plan, see out factsheet: 'Getting and Education, Health and Care Plan'.***

Young people and parents must be told by a local authority whether they will undertake an EHC assessment within 6 weeks of receiving a request to do so:

- if a local authority decides not to conduct an EHC assessment, they must give reasons for their decision and let the young person or the parent know of their right to appeal that decision
- if a local authority decides to conduct an EHC assessment, it must include the child's parent or the young person from the start and make them aware of their opportunities to offer views and information

Planning

Young people and parents must be told if a local authority decides not to issue a plan following an EHC assessment within a maximum of 16 weeks from the time a request for an assessment was made. Again, the local authority must give reasons for their decision and let the young person or the parent know of their right to

appeal that decision. Where it decides to issue a plan, a young person or parent must be notified and be given reasons why that is the case.

A young person or parent has a right to have 15 calendar days in which to provide views on the draft version of the EHC plan that a local authority just send to them and ask for a particular school or college to be named in it (a draft plan must not contain the name of a setting until parents have had a chance to express their preferred one). Young people and parents must also be told where they can find information about the schools and colleges that are available for the child or young person to attend.

A child or young person has a right to go to most schools or other settings³ requested by the young person or the parent, except for certain caveats (for more information on this, see the education section in this document). A young person or parent also has a right to request independent schools to be named in an EHC Plan and, while a local authority does not have to secure this, if it considers this to be appropriate and names it in a plan, it must fund this placement.

Where changes to the draft EHC Plan that are suggested by a young person or parent are not agreed, the local authority may still issue the plan but young people and parents can appeal.

Children and young people have a right to receive:

- the special educational provision required and set out in an EHC Plan (including the special educational provision needed to enable the outcomes set in an EHC Plan to be achieved)
- the health provision which has been assessed as being necessary to support them and which is set out in an EHC Plan
- any social care provision for under 18s provided under Section 2 of the Chronically Sick and Disabled Persons Act 1970

Children and Young people should also receive the social care support which has been assessed as being necessary to support them and which is set out in an EHC Plan (this could include a child in need or child protection plan, but only with the consent of the child, young person and/or parents).

An EHC Plan must not be disclosed without the consent of the young person or the parents unless it is deemed to be in the child or young person's best interests.

Reviewing/reassessing/ceasing

An EHC Plan should be reviewed at least annually and in partnership with children, young people and parents. Young people and parents must be notified of decision to change a plan – or not to change it – within 4 weeks.

Young people and parents may request a reassessment of an EHC Plan and a local authority must do this unless less than 6 months have passed since the last EHC assessment was conducted. They have a right to be told of the local authority's decision whether or not to reassess within 15 calendar days (and have 15 calendar days in which to make any representations themselves if they disagree). Young people and parents also have a right to request a reassessment of a plan if they move to a new local authority area.

³ See previous footnote for a list of which schools and settings this includes

A young person has a right to maintain their EHC Plan as long as they need the support to achieve the educational outcomes they have been set in the plan, and as long as they remain in education or training (until the age of 25). A local authority must consider whether a young person over the age of 18 requires additional time to complete their education or training in comparison to the majority of others of the same age who don't have SEN.

The whole process of EHC assessment and planning must take no longer than 20 weeks and families have a right to have a plan completed within this timeframe.

Preparing for adulthood

Young people's EHC Plans must have transition planning built into them from Year 9 onwards. This includes discussing post-16 options.

Young people with an EHC Plan can continue to receive their plan if they undertake an apprenticeship, a traineeship or a supported internship.

Youth custody

Children and young people with SEN in custody have a new right to:

- request an assessment in custody;
- appeal a decision made by their home local authority about, for example, a decision not to assess for a plan;
- receive an EHC Plan and have the support listed in it provided

Personal budgets

Young people and parents have a right to request a personal budget when a local authority has confirmed it will prepare an EHC Plan or during a review of an existing plan (unless the child or young person is in custody) and a local authority is under a duty to prepare one when requested.⁴ Young people and parents have a right for personal budgets to be set at a level to secure the provision set out in the EHC Plan.

Personal budgets are optional, meaning that a young person or parent has a right not to take one up.

Young people and parents have a right to receive a personal budget via a direct payment, an arrangement (e.g. a local authority manages the process of commissioning support), a third party arrangement (e.g. funds are managed by an individual or organisation on behalf of the parent or young person), or a combination of all of these. A local authority must agree that a direct payment is to be made in writing with the young person or parent and they must set out in writing any decision taken not to issue a direct payment (for example) and provide the opportunity for a formal review.

⁴ The duty to provide funding through a personal budget is subject to a caveat that settings and services can veto their funding being used for these purposes if this will mean that money is taken away from other children and young people. Local areas must set out their policies for personal budgets, including a description of the services across education, health and social care that currently lend themselves to the use of personal budgets.

Young people and parents have a right to receive information about organisations that may be able to provide advice and assistance to help them make decisions about personal budgets.

Appeals

Young people and parents have a right to know of their ability to:

- appeal decisions and the time limit for doing so;
- access mediation;
- access information, advice and support services; and
- access disagreement resolution services.

This is specifically with regard to:

- decisions not to conduct an EHC assessment
- decisions not to issue a plan following an EHC assessment
- decisions not to agree with changes suggested by a young person or parent to a draft EHC Plan
- decisions not to conduct a reassessment of an EHC Plan when requested to do so

Mediation

Young people and parents must consider mediation before registering an appeal, but have a right not to take it up if they do not wish to.⁵

If they decide to take up mediation, they have a right to receive information about it and to have a session within 30 calendar days of the local authority or Clinical Commissioning Group (if it is an appeal about health issues) being told that a young person or parent wants to pursue mediation.

First-tier Tribunal (SEND)

Once this is completed, parents and young people have a right to appeal to the Tribunal⁶ if it concerns:

- a decision by a local authority not to carry out an EHC needs assessment or reassessment;
- a decision by a local authority that it is not necessary to issue an EHC Plan following an assessment;
- the description of someone's SEN specified in an EHC Plan, the special education provision provided, the school or other institution named in an EHC Plan;
- amendments to any of the above elements of the EHC Plan;
- a decision by a local authority not to amend an EHC Plan following a review or reassessment
- decision by a local authority to cease to maintain an EHC Plan; or

⁵ If they do not wish to take up mediation, they must obtain a certificate confirming that they have considered mediation but have decided not to take it up.

⁶ Within 2 months from the date the decision they wish to appeal was made or 1 month from the date the certificate was issued following mediation

- a disability discrimination claim (appeal must be lodged within 6 months of the alleged incident of discrimination)

Other complaints routes

Young people and/or parents may also complain directly through the established complaints procedures of other bodies, for example:

- early education providers (must receive a response within 28 days);
- schools (including academies, free schools and independent schools);
- the Secretary of State (if disagreements have not been resolved at a local level and only with regard to maintained schools);
- Ofsted, post-16 institutions (or, if not satisfactory, via the Skills Funding Agency);
- local authorities (with regard to issues such as admission to schools, exclusions, child protection and school transport);
- the Local Government Ombudsman (where complaints have not been resolved through the local authority complaints procedure, but not issues that can be resolved at the Tribunal (as mentioned above))
- the Parliamentary and Health Service Ombudsman (with regard to NHS provided services)
- NHS Complaints system (for health services which a child or young person receives under an EHC Plan)
- Judicial Review (to consider the decision of local authorities with regard to decisions they have made on special education for children and young people)

Children and young people have a right to continue to receive an EHC Plan until an appeal/complaint has been concluded.

<h3>Social care support</h3>

Social care assessments (for both children and adults' services) should be aligned with EHC assessments "wherever possible" as families "should not be expected to repeatedly provide duplicate information to different services, or to attend numerous reviews, or receive support that is not coordinated or joined up".

A young person transitioning to adult services has a right to an adult care transition assessment to determine their likely needs under the adult social care system. This must be done if undertaking this assessment will be of significant benefit to the young person or their carer and they are likely to have needs for care or support after turning 18. This process must involve the young person and anyone else they want to involve in the assessment.

Children and young people receiving social care support have a right to continue to receive these services beyond the age of 18 until adult provision has started or a decision has been made that the young person's needs do not meet the eligibility criteria for adult social care. There must not be a gap in support for the young person. Children's services must not be discontinued simply because the young person has reached their 18th birthday.

Travel arrangements

A child, young person or parent has a right to receive reasonable transport or travel assistance (e.g. reimbursement of public transport costs, petrol costs or a travel pass) where a local authority names a residential provision at some distance from the family's home.

Children

Children have a right to receive and impart information, express an opinion and have that opinion taken into account under the new system. The government has said that their views "should be given due weight according to their age, maturity and capability".