

Special educational needs and disability

How do you know your council is doing all it can to improve SEND provision?



Must Know | Children's services, health and wellbeing



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Key messages

A child or young person has special educational needs (SEN) if they have a learning difficulty or disability which calls for special educational provision to be made. The definition of disability in the Children and Families Act 2014 is the Equality Act 2010 definition: a person is disabled if they have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on their ability to do normal daily activities.

Councils, schools, colleges, social care and health services need to work together to support children and young people with special educational needs and disabilities (SEND).

Support for children and young people with SEND across all settings should be focussed on helping them to achieve the best possible educational and other outcomes, preparing them for adulthood.

The Children and Families Act 2014 changed the legal framework in which statutory agencies must work to support children and young people with SEND from birth up to the age of 25. These reforms introduced Education, Health and Care (EHC) plans (replacing Statements of SEN) and duties on local statutory partners to work together to design and deliver a more coordinated system of support for children, young people and their families.

The Children and Families Act 2014 introduced key principles that were designed to support:

- the participation of children, their parents and young people in decision making
- greater choice and control for young people and parents over support
- collaboration between education, health and social care services to provide support.

A robust safeguarding approach is vital in all provision made for children and young people with SEND and every local area should be confident that its safeguarding policies and procedures consider the needs of children and young people with SEND.

Duties on councils and their partners

Councils must:

- Publish and maintain a clear, accessible local offer of services to support children and young people with SEN and disabilities and their families.
- Keep education and care provision under review and consider if it is sufficient to meet the needs of children and young people in their area.
- Involve parents, children and young people in reviewing and developing provision for those with SEND.
- Provide impartial information, advice and support on SEN and disability to parents, children and young people.
- Produce an EHC plan for all children and young people who are assessed as needing one in a timely and inclusive manner.
- Provide children and young people with the support agreed in the EHC plan and review those plans annually.
- Work with partner clinical commissioning groups (CCGs) to jointly commission services for children and young people with SEND in their local area.

Education, Health and Care (EHC) plans

Children and young people with more complex needs which cannot be met through existing and universal provision may need an EHC plan to ensure their needs are met and they make progress towards their identified outcomes. Councils are responsible for ensuring the EHC process involves families and that EHC plans (where assessed as necessary) are finalised within 20 weeks of an EHC needs assessment starting. Education, health and social care partners must be involved in providing advice for EHC needs assessments and so it is important

that all partners are involved in reviewing and developing the EHC process in a local area. An EHC plan includes the right to have a personal budget. Parents and young people have the right to request an EHC needs assessment.

The purpose of an EHCP is to:

- record the views, interests and aspirations of the parents and child or young person
- provide a full description of the child or young person's special educational needs and any health and social care needs
- establish outcomes across education, health and social care based on the child or young person's needs and aspirations
- specify the provision required and how education, health and care services will work together to meet the child or young person's needs and support the achievement of the agreed outcomes.

As part of the EHC process, parents and young people can make a request for a particular school or college, including academy schools, further education colleges and sixth form colleges, non-maintained special schools and independent special schools and colleges.

EHC plans must not be ceased simply because a young person is aged 19 or over. Young people with EHC plans may need longer in education or training to achieve their outcomes; this will happen at different stages for individual young people. EHC plans extended beyond age 19 will not all need to remain in place until 25, nor is there an expectation that young people will remain in education until aged 25. Plans for young people aged 19 or over must be reviewed at least annually and must contain outcomes to help the young person move onto the next stage of their lives.

Nationally, approximately 2.9 per cent of the school age population have an EHCP.¹

Schools and colleges

SEN support is an approach that all schools and colleges must adopt when it is clear that a child or young person needs additional support to learn and achieve. This should be part of a graduated response and for most children and young people this additional support will be enough to help them make progress. For a minority, an EHC plan will be necessary. Councils must make clear their expectations of schools and what should be offered as part of 'normally available' provision before a request for additional funding is made by a setting.

Schools have a duty to make arrangements for supporting pupils with medical conditions (some of whom may also have SEN).

Nationally, 11.7 per cent of the school age population is identified as having a special educational need without an EHCP.²

Local area SEND inspections

Since May 2016, Ofsted and the CQC (Care Quality Commission) are carrying out joint inspections in every local area to assess how partners are implementing the Children and Families Act 2014 for children and young people with SEND. The inspections look at:

- the effectiveness of the local area in identifying children and young people (aged 0-25) who have SEN and/or disabilities
- the effectiveness of the local area in assessing and meeting the needs of children and young people who have SEN and/or disabilities
- the effectiveness of the local area in improving outcomes for children and young people who have SEN and/or disabilities.

Areas do not receive a pass or fail rating but are provided with an inspection outcome letter that details their strengths and

1 www.gov.uk/government/statistics/special-educational-needs-in-england-january-2018

2 www.gov.uk/government/statistics/special-educational-needs-in-england-january-2018

weaknesses as assessed by the inspectors. Areas may have to develop a Written Statement of Action (WSOA) to demonstrate how the local area will address the weaknesses highlighted during inspection. Where this is the case, a local area will be under monitoring for an agreed period of time by the Department for Education (DfE) and NHS England.

Inspections will continue on a rolling basis once all local areas have been inspected. Inspections carried out thus far have highlighted the importance of a clear line of sight and accountability by elected members on the SEND agenda.

Those areas that have received a written statement of action will receive support and monitoring from DfE Advisers and can expect a revisit from Ofsted and CQC inspectors approximately two years after the initial inspection. At time of writing, these revisits have just started.

Working with health services

Some children and young people with SEND and complex needs will have support from a range of services and agencies. This is the reason that coordinated support and planning is so important both for individuals and strategically. Nationally NHS England is doing lots of work on a range of programmes, including transforming care, mental health transformation and personalised care, which impact on the SEND agenda and the NHS Long Term plan focusses heavily on the development of services for people with a learning disability and/or autism. For this reason it's important that local areas work in partnership across agencies to ensure a joined up approach. Data and understanding local need is critical to jointly planning and delivering services. The NHS Long Term Plan states that Integrated Care Systems (ICSs) will be central to driving these changes locally, and ensuring that SEND is on the agenda for ICSs is essential.

CCGs should have a designated medical or clinical officer for SEND. This role is invaluable providing liaison between health services and local authorities as well as supporting health services to meet their duties in relation to SEND.

Youth custody

The Children and Families Act includes requirements to support children and young people with SEN when they are detained in youth custody, including:

- the duty on the home council to keep an EHC plan when a child or young person enters custody
- the duty on the home council to arrange SEN provision for a child or young person with an EHC plan while they are in custody.

Preparing for adulthood (PfA)

A fundamental focus for all services should be supporting young people to achieve their long term outcomes and to move into adulthood with more choice and control. Services should start considering what this means for individual young people from the earliest years and a local area needs to ensure that there are opportunities available to young people with SEND in terms of paid employment and higher education, housing options and independent living. The four PfA outcomes are below. Each are of equal value and young people should be supported to exercise choice and control over their aspirations. The PfA outcomes should be a focus of conversations with young people when planning their support and also strategically when commissioning provision:

- employment
- good health
- friends, relationships and community
- independent living.

Information and advice for young people making the transition to post-school education

should be impartial and comprehensive, setting out all the options available for academic, vocational, or independent living training for young people.

19 to 25 year olds with EHC plans should have free access to further education in the same way as 16 to 18 year olds. Councils are not responsible for securing or funding education provision for 19 to 25 year olds with SEN, but without EHC plans, but councils must set out in their Local Offer the support that all young people with SEN can access.

Participation and involvement

The voice of children, young people and their parents are at the centre of Children and Families Act, clearly set out in the principles in Section 19. This means that children, young people and their families should be involved in decision making at every level of the system, including individually about their own care and support and strategically.

This includes participation in:

- strategic joint commissioning decisions
- the Local Offer
- Education, Health and Care plans
- decision making at 16 and over
- information and advice.

Through taking a person centred and outcome focussed approach services, councils can support families to deliver the best possible outcomes for children and young people with SEND and their families.

Parent carer involvement

The SEND code of practice requires councils to work with parent carer forums to co-produce with parent carer forums. Co-production means an equal and reciprocal partnership where everyone's experience, knowledge and skills are used to create better outcomes.

Parent carer forums work to understand the lived experience of living with a child or young person with SEND in a local area using a variety of methods including talking to families, running meetings and events, surveys and social media. They use this information to understand what services families need, what is working and what isn't and how families can be best supported. This knowledge and understanding is critical and councils should work with parent carer forums in all stages of designing, commissioning, delivering and reviewing services and policies.

Parent carer forums are organised and run locally. Local forums are supported by the charity Contact. Each local forum is part of a regional group (following the nine Department for Education regions). The regions work with other forums in the region to provide support and knowledge and work with the Department for Education regional peer networks and co-produce at a regional level.

The National Network of Parent Carer Forums (NNPCF) consists of a steering group member for each of the regions (two from London). The NNPCF works with national government departments and agencies to coproduce national policy and priorities. Details of local, regional and national parent carer activities can be found on the NNPCF website.

Young people's participation

In order to make sure that all children and young people's voices are heard, we must make sure that appropriate and accessible participation opportunities are available. This includes ensuring that children and young people have the skills and support they need to take part in a way that works for them.

Participation brings its own inherent long-term benefits to all involved. We know that delivering good, quality participation improves design and delivery of services to children and young people with SEND and their families. We also know that participation

supports professional and practitioners' understanding of the issues and challenges facing children and young people and their families, as well as supporting helping children and young people to develop key skills, helping them to achieve the best outcomes and preparing them for adulthood. The charities KIDS and the Council for Disabled Children hold the DfE contract for supporting children and young people's participation and more information can be found on their websites.

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High needs funding

The high needs funding system supports provision for children and young people with SEND from their early years to age 25, enabling both councils and providers to meet their statutory duties under the Children and Families Act. High needs funding is also intended to support good quality alternative provision for pre-16 pupils who cannot receive education in schools.

High needs funding is provided to councils through the High Needs Block of the Dedicated Schools Grant (DSG), and councils must spend that funding in line with the associated conditions of grant. High needs funding is also provided directly to some institutions by the Education and Skills Funding Agency (ESFA).

Councils should use their high needs budget to provide the most appropriate support package and setting for an individual with SEND, taking account of parental and student choice. It's really important that councils and institutions collaborate on all aspects of high needs funding to keep their provision and costs under review, develop more efficient ways of working and ensure better outcomes for children and young people.

Tribunals and the National Trial

When councils make a decision about an EHC needs assessment or an EHC plan, parents and young people have the right to appeal to the First-tier (Special Educational Needs and Disability) Tribunal. Mediation should be sought ahead of going to tribunal. An individual can appeal in the following circumstances:

- after a decision not to carry out an EHC needs assessment or reassessment
- after a decision not to issue an EHC plan following assessment
- when there is disagreement about how special educational needs have been described in an EHC plan
- when there is a disagreement about SEN provision in an EHC plan
- when there is a disagreement about the school or institution, or type of school or institution, named in an EHC plan, or if none has been named
- after a decision not to amend an EHC plan after a review or reassessment
- after a decision to cease an EHC plan.

Since April 2018, a two-year national trial is underway to extend the powers of the First-tier (SEND) Tribunal to make non-binding recommendations about the health and social care aspects of EHC plans.

Questions to consider

- Does your Local Offer for SEND set out clearly and comprehensively what support is available for children and young people?
- Is there a forum for strategic representatives across education, health and social care to discuss SEND and seek assurance that the local area is meeting its duties?
- Does your local area regularly complete a self-evaluation or peer-review to assess progress and identify strengths and weaknesses?

- Does your local area have a good, jointly agreed understanding of the needs of the local SEND community across education, health and social care? Have you translated those needs into shared priorities?
- Does your local area collaborate meaningfully with parents, children and young people both individually and strategically?
- How well do you co-produce with your local parent carer forum? Use the Contact Quality Indicators for Coproduction and Inclusive practice to benchmark how well you are doing.
- Does the local EHC process facilitate effective engagement of professionals across education, health and care, parent carers, children and young people?
- Are services across all agencies jointly developed, delivered and reviewed?
- Are services jointly commissioned across the local authority and health partners?
- Do you engage proactively with all types of education providers, including further education providers and all schools/colleges not directly maintained by the council?
- Are you confident that schools and colleges are inclusive of children and young people with SEND and that there is a robust graduated response at SEN support level?
- Does your local area have a designated medical or clinical officer for SEND?

Useful resources

CQC and Ofsted SEND inspections guidance

<https://www.gov.uk/government/publications/local-area-send-inspections-information-for-families/joint-inspections-of-local-area-send-provision>

Children and young people's participation

https://councilfordisabledchildren.org.uk/sites/default/files/field/attachemnt/MIH_Participation.pdf

National Network of Parent Carer Forums

www.NNPCF.org.uk

Local Area Audit tools

(Council for Disabled Children)

<https://councilfordisabledchildren.org.uk/help-resources/resources/audit-tools-hub>

Supporting pupils at schools with medical conditions

<https://www.gov.uk/government/publications/supporting-pupils-at-school-with-medical-conditions--3>

High Needs funding guidance

<https://www.gov.uk/government/publications/high-needs-funding-arrangements-2018-to-2019>

SEND Code of Practice

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

With thanks to the National Children's Bureau and National Network of Parent Carer Forums for their help with this guide.

Contact Quality Indicators for Coproduction and Inclusive practice to benchmark

[https://contact.org.uk/get-involved/parent-carer-participation/resources-\(general\)/](https://contact.org.uk/get-involved/parent-carer-participation/resources-(general)/)

LGA research on effective SEND systems

www.local.gov.uk/developing-and-sustaining-effective-local-send-system-practical-guide-councils-and-partners



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