



IPSEA

Getting the help you need

Information for young people, parents and carers

This booklet is about the rights of young people aged 16-25 with special educational needs and disabilities. It outlines their rights to additional support in their education or training, so that they can achieve to the best of their abilities.

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→ 1. Introduction

Young people with special educational needs and disabilities (SEND) have a right to additional support with education and training. The purpose of this is to try and level the playing field – so that, as far as possible, they can access the same opportunities as young people without SEND.

When we refer to ‘you’, we mean the young person. This is because the legal rights we are talking about are the young person’s rights. Most young people will continue to get help and support from their parents or carers, and they can ask their parents to help them in any way they like.

We hope that the parents and carers of young people will find this booklet helpful. It contains a lot of information and some young people might need help to understand it.

Who is IPSEA?

IPSEA exists because children and young people with SEND are legally entitled to the right education. IPSEA is a national charity which provides free legally-based advice to parents of children with special educational needs and disabilities. As well as advising individual families, we seek to improve SEN policy across England using the evidence we gather via our services.

Some key terms

A young person is someone aged 16 to 25. A child becomes a young person at the end of the school year in which they turn 16.

A young person has **special educational needs** if they have a learning difficulty or disability which calls for special educational provision to be made for them.

A young person has a **learning difficulty or disability** if they have significantly greater difficulty in learning than most others of the same age, or if they have a disability which makes it difficult for them to use facilities normally provided in mainstream post-16 institutions.

Special educational provision means any education or training provision that is additional to, or different from, that made generally for others of the same age in mainstream post-16 institutions.

An **Education, Health and Care plan (EHC plan)** is a legally binding document which sets out the young person’s needs and the provision they will receive in order to achieve identified outcomes in their education.

The **local authority (LA)**, sometimes called the council, is the body which is responsible for public services and facilities in the area in which you live.

An **Independent Supporter** is a person who can support you at any stage of the EHC planning process, including helping you with filling in forms, applications and other documents. They are paid for by the LA but are independent, which means they will give you impartial advice and help you put your own views forward. You can find out about your local Independent Support service on the [Council for Disabled Children’s website](#).

→ 2. A summary of your rights

- You should be at the centre of planning for and making decisions about your future. The LA must have regard to your views, wishes and feelings, and must provide you with the support and information you need in order to participate as fully as possible in decisions.
- Colleges and schools must use their best endeavours to ensure that you receive the special educational provision you require, whether or not you have an EHC plan.
- Where more support is needed, you can request an EHC needs assessment, which may lead to you getting an EHC plan.
- The LA must provide and fund all of the special educational provision described in an EHC plan.
- An EHC plan should continue until age 25 or until you no longer need the special educational provision it contains.
- Young people with disabilities must not be discriminated against, and schools and colleges must make reasonable adjustments to avoid placing them at a disadvantage. A reasonable adjustment could be something like specialist equipment you need, or extra study time.

→ 3. Where can young people with SEND receive special educational provision?

Special educational provision can be provided in a wide range of settings, including:

- school sixth forms (both mainstream and special schools)
- sixth form colleges
- further education colleges
- 16-19 Academies
- special post-16 institutions
- vocational learning and training providers in the private or voluntary sector.

However, higher education is not covered. Universities do have duties to support students with SEND, but that is beyond the scope of this booklet.

What kinds of study programmes are available?

The range of available study programmes includes A-levels, GCSEs, BTECs and other vocational or stepping-stone qualifications. You could also go on to gain work experience through an apprenticeship, traineeship or supported internship. There is more information about your options on the [Preparing for Adulthood website](#) and on [IPSEA's website](#).

How to research your options

There is no single central source of information, and our experience suggests that you will need to do a lot of research yourself.

If you are still at school, your **head teacher** and **SENCO** should be able to help, and may know where their ex-pupils with SEND have gone in the past.

The LA must publish a **Local Offer** containing information about all the provision it expects to be available across education, health and social care for children and young people in the area with SEND. This will be available on your LA's website.

Ask the **LA officer** responsible for your EHC plan, if you have one, to outline the options open to you. If they do not respond at first, be persistent!

LAs must ensure that there is an **independent source of information, advice and support available for young people** – this is the Independent Supporters we mentioned above, along with [your local Information, Advice and Support Service](#) (this may be called IASS or SENDIASS).

Some LAs have a service which gives advice on further education and employment in the local area – this may be called **Connexions**. If you don't have one in your area, try the [National Careers Service](#).

Find out about your **local FE colleges, sixth forms and other educational settings**. You can also find out about independent colleges – it's harder to secure funding for these, but not impossible.

Check the websites of **national charities** such as Mencap, the National Autistic Society, the Council for Disabled Children and the Prince's Trust.

Local **SEND charities, support groups** and **parent forums** can be a useful source of information.

→ 4. Moving on from school to college



Start early – planning for adulthood and further education should begin in Year 9.

The further education environment can be very different to that of school. It may be much less structured and there may be less in the way of dedicated SEND resources and staff. You may require different or additional support to that which you received in school.

If you already have an EHC plan:

- All annual reviews from Year 9 should include a focus on preparing you for adulthood.
- Consider requesting a full EHC needs reassessment at your Year 11 annual review, to ensure that your plan is fully updated and contains specific details of all the provision that you will need in your new placement. It is really important that all your provision is detailed. It should say how many hours will be provided, how frequently it will be delivered, and who will deliver it. You can use IPSEA's [model letter](#) to make this request.

- Your EHC plan should be amended by 31 March in Year 11 to name your college or other post-16 institution.

If you don't have an EHC plan, you may wish to request an EHC needs assessment early in Year 11 as this might result in you getting an EHC plan – see section 6 of this booklet.

Full information about your SEND and the provision you will require should be sent to your post-16 placement in advance so that they can prepare for your arrival. You may wish to arrange several visits or meetings during the months before you arrive, so that everything is in place and you know what to expect.

→ 5. What should the post-16 provider be doing to support me if I don't have an EHC plan?

Schools and colleges must be ambitious for young people with SEND. Most young people with SEND will be educated in mainstream schools or colleges and receive special educational provision from within the school or college's own resources. This is known as **SEN Support** (in some colleges it might be called additional learning support).

SEN Support might include assistive technology, personal care, note takers, one-to-one or small group learning, independent living training, accessible materials such as symbol-based written materials, and access to specialist services such as speech and language therapy.

Colleges should be involved in transition planning between school and college. They must have a named person who oversees SEND provision (like a SENCO in schools). You, and your family if you want, must be involved in all decisions about your support.

If you are at college, the college must use its best endeavours to provide the special educational provision that you need. The college should work with you to plan and provide support. Once that support is in place the college should review it regularly and adjust it if necessary. Colleges must have access to external specialist services and expertise to support the needs of young people with SEND.

→ 6. Requesting an EHC needs assessment

An EHC plan is only necessary where a young person's needs cannot be met from within the school or college's resources. If you need a higher level of support, you could request an EHC needs assessment. It is up to you whether you would like to do this. **A request for an EHC needs assessment can be made by:**

- you (but you can ask for help from your parents or carers, and/or an Independent Supporter)
- if you can't do it yourself, your parent or carer (see section 9 of this booklet)
- your school or college.

You do not need to wait for the school or college to make the request – you can make it yourself.

All you need to do is write to your LA – there is no particular form, but you can use IPSEA's [model letter](#) on our website which covers all the relevant points.

Can parents be involved in the EHC needs assessment?

Yes, if you want them to help you, or if your parents are dealing with it on your behalf (see section 9 of this booklet).

When should an EHC needs assessment be done?

The law says that the LA must carry out an EHC needs assessment where

- a young person has or may have SEND, and
- it may be necessary for special educational provision to be made through a plan.

The LA should also consider whether you need extra time to complete your education or training, compared to other young people your age who don't have SEND.

This is not a very high threshold. If you meet this legal test, the LA must carry out an assessment.

Paragraph 9.14 of the SEN and Disability Code of Practice (“**the Code**”) gives some further guidance on matters that the LA should take into account. (See section 15 of this booklet for an explanation of what the Code is.) This includes information about your rate of progress and any action that the school or college has already taken to support you. However, this is just guidance and is not part of the legal test.

Some LAs have their own criteria for EHC needs assessments. For example, some will tell you that they only assess if you are in the bottom 2%, or are at least a certain number of years behind, or if the school/college has already spent a certain amount of money on supporting you. These are just internal policies and they are not part of the legal test. The LA cannot refuse to assess you based on its internal policies alone.

If circumstances are likely to change in the foreseeable future – for example, if you are likely to move on to the next phase of education or training – then the LA must bear this in mind.

The LA must tell you whether it's going to assess your needs within 6 weeks of the date that you asked it to.

What if the LA refuses to carry out an assessment?

You have the right to appeal to the First-tier Tribunal (Special Educational Needs and Disability) – in this booklet we will simply refer to it as the Tribunal. The appeal will be in your name, not your parents', although your parents or carers can help you if you want. Again, you can also get help from an Independent Supporter.

You won't have to go to a hearing. 'Refusal to assess' cases are decided by a judge reading all of the evidence sent in by the parties. This means there's no need to have a hearing unless you have a good reason for wanting one.

IPSEA has a useful online resource called the “Refusal to Assess Pack” which can be accessed [on our website](#). This explains in detail how to argue your case.

Refusal to assess appeals are often successful, so it can be worthwhile appealing. If you are successful, the Tribunal will order the LA to conduct an assessment – it won't (at this stage) order the LA to provide you with an EHC plan.

What happens during an EHC needs assessment?

The LA must gather advice and information on:

- your special educational needs and/or disabilities
- the provision needed to support your needs
- the educational outcomes that it's hoped you will achieve.

This must include

- information from you
- educational advice from the school/college
- medical advice
- advice from an educational psychologist
- social care advice
- advice from any other person the LA thinks is appropriate
- advice on preparing for adulthood and independent living
- advice from any person that you reasonably request. For example, advice from CAMHS, a speech and language therapist or an occupational therapist.

Any public body (such as an NHS department) that is consulted must respond within 6 weeks of being asked. If they genuinely can't respond in time, the LA should obtain the information from a private specialist instead.

The LA must then decide whether it is 'necessary' for you to have an EHC plan.

The LA must tell you whether it's going to give you an EHC plan within 16 weeks of the date that you asked the LA to assess your needs.

For more details of the EHC needs assessment process, please see the section of IPSEA's website on [EHC needs assessments](#).

If the LA thinks that you do need an EHC plan, it will send you a draft plan. You will have at least 15 calendar days to comment on the draft and to say which school, college or other post-16 institution you want to attend.

The final EHC plan must be sent to you within 20 weeks of the date that you asked the LA to assess your needs.

If the LA decides not to give you an EHC plan, you have the right to appeal to the Tribunal. If you win your appeal, the Tribunal will order the LA to issue a plan (but the Tribunal won't say what should be in it – the LA will still write the plan).

→ 7. What should be in my EHC plan?

Your EHC plan should set out what your educational needs are, and the provision which is required to meet those needs. It should also state what educational institution you will attend.

The plan needs to include a description of the support you need, how many hours of support you will get, how often you'll get the support, and who will provide it.

If your college course is only part-time but you need provision and support across five days of the week, this should be set out in your plan. This could involve periods of time in different settings and activities such as volunteering, work experience, or life, social and travel skills training. Health and social care should be covered as well as educational support.

The outcomes in the plan need to be S.M.A.R.T. (which stands for Specific, Measurable, Achievable, Realistic and Time-bound). Outcomes should be included which prepare you for adulthood, higher education and/or employment, independent living, good health, and participation in society. For more detail about outcomes see paragraph 9.64 onwards of the Code. (See section 15 of this booklet for an explanation of what the Code is.)

The EHC plan may contain a **personal budget**, which details how much the special educational provision in your plan will cost. You can ask your LA to prepare a personal budget. If you have a personal budget, you can ask for direct payments to be made, so that you or your parent or carer can organise the provision yourselves. However, the LA needs to agree that direct payments are appropriate.

Once education and social care provision is set out in an EHC plan, the LA *must* make that provision. If it does not, the LA is in breach of its legal obligations.

For more detailed advice on how to check through your draft plan, please see IPSEA's online resource on [draft EHC plans](#).



Naming a post-16 institution in the EHC plan

You have the right to request a place at a post-16 institution which is one of the following:

- a maintained school (schools which are funded by the LA)
- an academy
- an institution within the further education sector
- a non-maintained special school (independent schools, but where all of the pupils are placed there by the LA through an EHC plan)
- a section 41 institution (independent special schools or colleges where pupils are usually placed by the LA through an EHC plan. A list of section 41 institutions can be found on the [gov.uk website](#)).

The LA must agree to you attending your preferred institution unless that institution is unsuitable, too expensive, or your attendance there would interfere with the education of other students and there is nothing the school can do to avoid this.

If the LA names one of the above institutions in Section I of your EHC plan, then that school or college is legally required to let you attend.

However, this doesn't mean that you have the right to study any particular course. You should therefore make sure that the course of study you want to follow has been agreed in writing, and ideally it should be set out in the provision section of your EHC plan, Section F.

You can also ask for an independent college or other institution, but you would need to show that the LA cannot offer a suitable alternative placement or your choice is not much more expensive than the LA's proposed placement.

If you want a residential college, you will need to show that you need educational programmes throughout your waking day in order to meet your special educational needs.

Special educational provision can also be made '**otherwise**' than at a **post-16 institution**, if necessary. This could cover a situation where, for example, your health makes it difficult for you to attend college regularly, or where you have a 5-day package of support with some provision through a part-time college course and some elsewhere.

You **do not** need to be on a study programme that leads to qualifications or employment. EHC plans cover any education or training in the broadest sense – for example, learning skills which can help you live more independently.

What if I disagree with the contents of my EHC plan?

You have the right to appeal to the Tribunal, but only against certain parts of the EHC plan. See the section of IPSEA's website about [appealing to the SEND Tribunal](#) for more information on what you can appeal about and how.

8. When does the EHC plan end?

Every young person's EHC plan will continue until:

- they are 25, or
- the LA ceases to be responsible for them, or
- the LA determines that it is no longer 'necessary' for the plan to be 'maintained' (continued).

One of the circumstances in which it is no longer 'necessary' to maintain the EHC plan is where you no longer require the special educational provision specified in it. The LA must consider whether the educational and training outcomes set out in your plan have been achieved, but this is only one relevant factor.

If you have ceased to attend the educational institution specified in your plan – for example, because your course has ended – the LA must review the plan and ask you whether you want to remain in education or training, either at that place or somewhere else, to complete or continue with your learning.

If the LA decides to ‘cease to maintain’ (stop funding) your EHC plan, you can appeal to the Tribunal. The LA must continue to make the special educational provision set out in the plan unless and until the Tribunal has decided whether it agrees with the LA’s decision. This can mean you get some extra months of provision even if you ultimately lose the appeal.

The LA is not allowed to simply stop funding your course or your place at college without amending or ceasing your EHC plan. This is because the LA can’t make a decision this significant without you having the right to appeal against it. If the LA tries to do this, then you should seek advice from your local IASS service (see section 3 of this booklet) or contact IPSEA through [our website](#).

At age 25, or earlier if you move out of education or training before then, there should be a planned transition to adult health and social care services (see the Code, paragraphs 8.54-67). (See section 15 of this booklet for an explanation of what the Code is.) Under no circumstances should you suddenly be left without support.

→ 9. Who makes the decisions?

Now you are a young person...

At the end of the school year in which you turn 16, you will become the decision maker in the EHC process instead of your parents or carers. Your parents or carers are likely to continue to have an important input, but the ultimate decision rests with you.

Where do parents or carers fit in?

The Code (paragraphs 8.13-19) makes clear that local authorities, schools or colleges, health services and other agencies should continue to involve parents/carers in discussions. (See section 15 of this booklet for an explanation of what the Code is.) The final decision, however, rests with the young person.

For young people aged 16-17, parents still have parental responsibility for you (because under the law you’re not yet an adult). This means it is particularly important for local authorities and other agencies to include them in discussions.

What about when a young person can’t make a decision for themselves?

As described above, a young person can ask their parents, carers and/or an Independent Supporter for help with any of the things described in this booklet. This would be in a situation where they want to make the decision themselves but might need help with reading, writing or filling in forms, for example.

However, some young people will not have the mental capacity to make a particular decision, meaning that they are not capable of making the decision themselves even with support.

All young people and adults are presumed to have the capacity to make their own decisions unless there is clear evidence that they cannot.

When does a person not have the mental capacity to make decisions?

A person does not have capacity to make a particular decision if they are unable to:

- (a) understand the information relevant to the decision,
- (b) retain that information,
- (c) use or weigh up that information as part of the process of making the decision, or
- (d) communicate their decision (whether by talking, using sign language or any other means).

The assessment of capacity is decision-specific: someone who may lack capacity to make a decision in one area of their life may have capacity in another aspect of their life.

If a young person lacks the capacity to make a relevant decision, the parent or carer will generally be the decision maker.

If a dispute about whether or not a young person has capacity happens in a Tribunal appeal, the question of capacity will be decided by the Tribunal panel first of all.

You can find further information about this on the section on IPSEA's website about [mental capacity](#).

→ 10. Transport

If you can't get to college, you can't benefit from the education on offer. This should be obvious, but unfortunately there is no automatic right to transport for young people with SEND after the age of 16.

16-18 year olds

The LA must publish an annual Transport Policy Statement (TPS) as part of its Local Offer, setting out the arrangements it will make to ensure that young people of sixth form age can access education or training.

There is no guarantee that transport arrangements will be made for students in this age group, and it is unlikely that they will be free to all students.

The LA should have a complaints procedure for challenging a transport decision and this should be set out in the TPS.

Adult learners

Adult learners are usually those over the age of 19. However, if a young person has started a course of study before they reach 19, they will not be considered to be an adult learner until they have finished that course and started a new one.

The LA has a duty to make transport provision for adult learners as it considers necessary to ensure that adult learners are able to attend further education institutions. Any transport arrangements made under this duty must be free of charge.

If you have an EHC plan, this could strengthen your argument that travel arrangements are 'necessary'. The LA has a duty to make sure you get the special educational provision in your plan, and it would have real difficulty doing this if you can't get to college to access that provision.

→ 11. Disability discrimination

A young person is disabled under the Equality Act 2010 if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. This is a low test to meet, as 'substantial' means more than minor or trivial, and 'long term' means lasting or likely to last more than one year.

Not all young people with SEN will be disabled under this definition, but many will be.

Schools, colleges and LAs have legal duties to prevent discrimination, whether directly or indirectly. They must ensure that they do not treat young people with disabilities less favourably than others. They also have a duty to make reasonable adjustments – to change what they do or were proposing to do – to ensure that a disabled young person is not disadvantaged.

Disability discrimination claims against schools are made to the Tribunal. Claims against FE colleges and LAs are made to the County Court.

If discrimination has taken place, the provider or LA might be ordered to take steps to put things right. This could include a letter of apology, staff training or extra tuition for you. However, compensation cannot be ordered.

Bringing a claim for disability discrimination against your educational establishment is usually a last resort because it tends to sour the relationship. Sometimes there is an important matter of principle at stake, but sometimes it is better to concentrate your efforts on securing better special educational provision for the future (such as by obtaining or amending an EHC plan).

→ 12. A few tips on negotiating – and fighting!

Know your rights: Many families give up because they don't know what they are entitled to. Sometimes all it takes is pointing out to your LA that the decision it has made is wrong.

Are you listening to me? The law reflects the importance of listening to young people and their families and supporting them so that they can be fully informed and involved in decisions. The Code sets out the need to be ambitious for young people and to support them so that they can achieve the best possible outcomes in terms of education, independent living and participation in society. If you feel you are being ignored, remind the LA of the Act and Code. (See section 15 of this booklet for an explanation of what the Act and the Code are.)



The importance of evidence: Whenever you have to challenge the LA, whether in a Tribunal appeal or otherwise, it's important to have evidence to back up what you are saying. Can your school, college, speech therapist, CAMHS adviser or other professionals provide reports, data or letters of support to explain your difficulties and the assistance that you require? If you are appealing to the Tribunal, you may consider getting reports from independent experts such as an educational psychologist (although you will have to pay for these and they can be expensive).

Can I get legal aid? Legal aid could cover the cost of a solicitor to prepare your case, and the cost of any expert reports that are needed (although it will not cover the cost of a representative at the hearing). Any legal action will be brought in your name. In most cases, your parents' or carers' income will also be taken into account. You can check whether you are eligible for legal aid [on the Civil Legal Advice website](#).

IPSEA is here to help: IPSEA's website contains helpful legal resources, information, news and more. Our dedicated Advice Line and Tribunal Help Line are available to advise and support you, and you can book a call-back through the website. If you have to go to Tribunal, we may be able to provide a volunteer representative to support you.

→ 13. How to complain when you are not getting the support you need

Schools, colleges and academies have a duty to use their best endeavours to ensure that you get the support you need. If this isn't happening, you can complain to the governing body of a school or college or the proprietor of an academy.

If you have an EHC plan, and the educational institution is not making the provision contained in the plan, you can also complain to the LA. The legal duty to make the provision in a plan rests with the LA, not the institution.

You can also complain to the Local Government Ombudsman (LGO) if you have been through the LA's complaints procedure without success. The LGO can make a variety of recommendations to put things right, including the payment of compensation. You can find out more through the [LGO's website](#).

You can appeal to the Tribunal against any LA decision concerning an EHC needs assessment or plan. The appeal must be brought within 2 months of the decision. You can find all the relevant forms and some guidance about how the process works on [the Tribunal's website](#).

If the LA is not complying with its legal duties (for example, failing to make the provision set out in an EHC plan), you may also be able to bring an action in the courts for Judicial Review. You should get advice from a solicitor if you think you might need to do this.

You can find out more about making complaints on [IPSEA's website](#).

→ 14. Useful links and websites

For further advice about education:

- Preparing for Adulthood is a government-funded organisation which has a lot of information about options for young people with SEND:
<http://www.preparingforadulthood.org.uk/>
- The Council for Disabled Children also provides services and information for young people: <https://councilfordisabledchildren.org.uk/resources-and-help/im-young-person>
- Contact a Family have advice for young people and their families about the transition to adulthood on their website:
https://www.cafamily.org.uk/media/792666/preparing_for_adulthood.pdf

If you need advice about other topics:

- For advice about **benefits**, contact Civil Legal Advice on 0345 345 4345 or your local Citizen's Advice Bureau (CAB): www.citizensadvice.org.uk
- For advice about **social care**, get in touch with Contact a Family:
<https://www.cafamily.org.uk> Tel: 0808 808 3555
- For advice about how to get support for your **special educational needs**, contact your local Information, Advice and Support Service (IASS). You can search for details of your local IASS at <https://councilfordisabledchildren.org.uk/information-advice-and-support-services-network/find-your-local-ias-service>

→ 15. Law and guidance

- Most of the relevant law about SEND is contained in the **Children and Families Act 2014** ("the Act") and its accompanying Regulations. This is **law** which means it must be followed.
- Guidance on how the law should be applied is set out in the Special Educational Needs and Disability Code of Practice: 0 to 25 years ("the Code"). Chapters 7, 8 and 9 are especially relevant. This is **guidance**, not law, but all local authorities (LAs), colleges and other bodies working with young people with SEND must follow it unless they have a good reason not to.

Both of these can be found on the [IPSEA website](http://www.ipsea.org.uk).

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