

## **Revision to the SEN and Disability Code of Practice: 0-25 years**

16 April 2014 Respond by 6 May 2014 Ref: DfE

This document explains why the DfE have issued a second draft and the issues this new document has responded to. These include clarification of the legal duties to reflect concerns about an overall lack of distinction between statutory and non-statutory duties and the increased focus on disabled children and on post-16 arrangements, particularly the transition to adulthood

<http://preview.tinyurl.com/qfuyoao>

## **Draft special educational needs and disability code of practice: 0 to 25 years: Statutory guidance for organisations who work with and support children and young people with special educational needs and disabilities**

(249 pages - increased from 174 in previous draft)

16 April 2014- respond by 6 May 2014 Ref: DfE

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It aims to identify the main aspects of the second draft SEND Code of Practice as they relate to schools. The contents list has been used to provide a framework:

- Indicates the main sections of each chapter
- Indicates the sub-sections in each chapter
- All text in italics is lifted directly from the main document.
- All text in bold is simply a device to enable a rapid scanning of the main issues.

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### **Chapters:**

#### **Introduction**

- **About this guidance**

**Page 1** *In this Code of Practice where the text uses the word **must** it refers to a statutory requirement under primary legislation or regulations.*

- **Expiry or review date**
- **To which legislation does this guidance refer?**
- **Who must have regard to this guidance?**
- **The First-tier Tribunal (special educational needs and disability)**
- **Changes from the SEN Code of Practice 2001**

**Pages 2/3** *vi. The main changes from the SEN Code of Practice (2001) reflect the changes introduced by the Children and Families Act 2014. These are:*

- *The Code of Practice (2014) covers the **0-25 age range** and **includes guidance relating to disabled children and young people as well as those with SEN***
- *There is a clearer focus on the **participation of children and young people and parents** in decision-making at individual and strategic levels*
- *There is a stronger **focus on high aspirations** and on improving outcomes for children and young people*
- *It includes guidance on the **joint planning and commissioning** of services to ensure close co-operation between education, health and social care*

- It includes guidance on publishing a **Local Offer** of support for children and young people with SEN or disabilities
- **There is new guidance for education and training settings on taking a graduated approach to identifying and supporting pupils and students with SEN** (to replace School Action and School Action Plus)
- For children and young people with more complex needs a co-ordinated assessment process and the new 0-25 **Education, Health and Care plan** (EHC plan) replace statements and Learning Difficulty Assessments (LDAs)
- There is a greater focus on support that enables those with SEN to succeed in their education and make a successful transition to adulthood
- Information is provided on relevant duties under the Equality Act 2010
- Information is provided on relevant provisions of the Mental Capacity Act 2005

#### ○ **Implementation of the Code of Practice**

**Page 3. vii.** From **1 September 2014** the majority of Part 3 of the Children and Families Act 2014, its associated regulations and this Code of Practice will be in force, subject to any transitional arrangements

#### ➤ **Implementation**

#### ➤ **Transitional arrangements**

#### ○ **Special educational needs (SEN)**

*xi.* A child or young person has SEN if they have a **learning difficulty or disability** which calls for **special educational provision** to be made for him or her.

*xii.* A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- has a **significantly greater difficulty in learning** than the majority of others of the same age, or
- **has a disability** which prevents or hinders him or her from making use of educational facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions

*xiii.* For children aged two or more, special educational provision is educational or training provision that is additional to or different from that made generally for other children or young people of the same age by mainstream schools, maintained nursery schools, mainstream post-16 institutions or by relevant early years providers. For a child under two years of age, special educational provision means educational provision of any kind.

*xiv.* A child under compulsory school age has special educational needs if he or she is likely to fall within the definition in paragraph *xii.* above when they reach compulsory school age or would do so if special educational provision was not made for them (Section 20 Children and Families Act 2014).

#### ○ **Disabled children and young people**

**Page 5 xvi.** Many children and young people who have SEN may have a disability under the Equality Act 2010 – that is ‘...**a physical or mental impairment which has a long term and substantial adverse effect on their ability to carry out normal day-to-day activities**’. This definition includes sensory impairments such as those affecting sight or hearing, and long term health conditions such as asthma, diabetes, epilepsy, and cancer.

Where a child or young person requires special educational provision over and above the adjustments, aids and services required by the Equality Act 2010 they will be additionally covered by the SEN definition.

The Equality Act 2010 sets out the legal obligations that schools, early years providers, post-16 institutions, local authorities and others have towards disabled children and young people:

- They must not **directly or indirectly discriminate against, harass or victimise** disabled children and young people
- They must make **reasonable adjustments**, including the **provision of auxiliary aids and services**, to ensure that disabled children and young people are not at a substantial disadvantage compared with their peers.

- They must **publish information** to demonstrate their compliance with this general duty and must prepare and publish objectives to achieve the core aims of the general duty. Objectives must be specific and measurable.

**Page 6** xix. School governing bodies and proprietors **must** also publish information about the arrangements for the **admission of disabled children**, the steps taken to prevent disabled children being **treated less favourably** than others, the facilities provided to assist access of disabled children, and their **accessibility plans**.

- **Guidance**

### **Chapter 1 Principles**

- **What this chapter covers**
- **Relevant legislation**
- **Principles underpinning this code of practice**
- **The principles in practice**
- **Participating in decision making**
- **Supporting children, young people and parents to participate in decisions about their support**
- **Involving children, young people and parents in planning, commissioning and reviewing services**
- **Parent Carer Forums**
- **Identifying children and young people's needs**
- **Greater choice and control for parents and young people over their support**
- **Collaboration between education, health and social care services to provide support**
- **High quality provision to meet the needs of children and young people with SEN**

**1.24 High quality teaching that is differentiated and personalised will meet the individual needs of the majority of children and young people.** Some children and young people need educational provision that is **additional to or different from this. This is special educational provision under Section 21 of the Children and Families Act 2014.** Schools and colleges **must use their best endeavours** to ensure that such provision is made for those who need it. Special educational provision is underpinned by high quality teaching and is compromised by anything less.

- **A focus on inclusive practice and removing barriers to learning**

Early years providers, schools and colleges should know precisely where children and young people with SEN are in their learning and development. They should:

- **ensure decisions are informed by the insights of parents and those of children and young people themselves**
- **have high ambitions and set stretching targets for them**
- **track their progress** towards these goals
- **keep under review the additional or different provision** that is made for them
- **promote positive outcomes** in the wider areas of **personal and social development** and
- **ensure that the approaches used** are based on the **best possible evidence** and are having the **required impact on progress**.

**1.27 Where a child or young person has SEN but does not have an EHC plan they must be educated in a mainstream setting** except in specific circumstances

Children and young people with SEN have different needs and can be educated effectively in a range of settings, including mainstream settings and special schools and colleges. Alongside the general presumption of mainstream education, **parents of children with an EHC plan and young people with such a plan have the right to seek a place at a special school, special post-16 institution or specialist college.**

- **Supporting successful preparation for adulthood**

### **Chapter 2 Impartial advice and guidance**

- **What this chapter covers**

This chapter is about the information, advice and support which local authorities **must** provide for children, young people and parents, covering special educational needs (SEN), disability, health and social care

- Relevant legislation
- Primary
- Regulations
- Introduction
- Who are information, advice and support for?
- Children
- Parents
- Young people
- What needs to be provided?
- Additional support
- Support for parents in HM Armed Forces

### **Chapter 3 Working together across education, health and care for joint outcomes**

- **What this chapter covers**

*This chapter explains the duties local authorities and their partner commissioning bodies have for developing joint arrangements for commissioning services to improve outcomes for 0-25 year old children and young people with special educational needs (SEN) or disability, including those with Education Health and Care (EHC) plans.*

- Relevant legislation
- Primary
- The legal framework
- Scope of joint commissioning arrangements
- Establishing effective partnerships across education, health and care
- Partnership with children, young people and parents
- Joint understanding: Joint Strategic Needs Assessments
- Responsibility for decision making in joint commissioning arrangements
- Using information to understand and predict need for services
- Joint planning
- Deciding on shared outcomes
- Making best use of resources
- Personal budgets
- Joint delivery
- Joint review to improve service offered
- Education, Health and Care: roles and responsibilities
- Designated Medical/Clinical Officer
- Children's social care
- Adult social care
- Health services for children and young people with SEN and disabilities and their families
- Local authorities' role in delivering health services
- The health commissioning duty
- Schools and post-16 settings as commissioners

**3.65 Schools and post-16 settings can also be commissioners in their own right. Schools have a notional SEN budget and many schools will commission services (such as speech and language therapy, pastoral care and counselling services) to support pupils. Schools must work with the local authority in developing the Local Offer, which could include school-commissioned services. The school must set out its SEN policy and information on its approach to supporting children and young people with SEN. The school's governing body must ensure that arrangements are in place in schools to support pupils at school with medical conditions and should ensure that school leaders consult health and social care professionals, pupils and parents to ensure that the needs of children with medical conditions are effectively supported.**

- **Regional commissioning: meeting the needs of children and young people with highly specialised and/or low incidence needs**
- **Local accountability**

**3.69 The roles and responsibilities of bodies involved in joint commissioning arrangements are summarised below:**

Maintained nurseries, schools (including academies.) Mainstream schools have duties **to use best endeavours to make the provision required to meet the SEN of children and young people.** All schools **must** publish details of what SEN provision is available through the **information report** and **co-operate with the local authority in drawing up and reviewing the Local Offer.** Schools also have duties to make **reasonable adjustments** for disabled children and young people, to **support medical conditions** and to **inform parents and young people if SEN provision is made for them.** Accountability is through Ofsted and the annual report that schools have to provide to parents on their children's progress.

#### **Chapter 4 The Local Offer**

##### ○ **What this chapter covers**

*This chapter explains the statutory duties on local authorities to develop and publish a Local Offer setting out the support they expect to be available for local children and young people with special educational needs (SEN) or disabilities*

##### ○ **Relevant legislation**

###### ➤ **Primary**

###### ➤ **Regulations**

##### ○ **What is the Local Offer?**

##### ○ **Preparing and reviewing the Local Offer**

###### ➤ **Involving children and young people and parents**

###### ➤ **Involving schools, colleges, health services and others**

###### ➤ **Keeping the Local Offer under review**

###### ➤ **Publishing comments about the Local Offer**

###### ➤ **Taking action in response to comments about the Local Offer**

##### ○ **What must be included in the Local Offer?**

###### ➤ **Education, health and care provision**

**4.32 The local authority must set out in their Local Offer, an authority-wide description of the educational and training provision children and young people with SEN or disabilities can expect to be provided from the funding provided to providers of relevant early years education, schools and the full range of post-16 providers in their area. This includes information about the arrangements in place for:**

- **identifying** the particular **SEN** of children and young people
- **consulting with parents** of disabled children with SEN and disabled young people with SEN
- **approaches to teaching, adaptations to curriculum, the learning environment and access to ancillary aids and assistive technology**, including Augmentative and Alternative Communication (AAC) and disabled children and young people and those with SEN
- **assessing and reviewing pupils' and students' progress** towards outcomes, including how they work with parents and young people in doing so
- supporting disabled children and young people and those with SEN in **moving between phases** of education and **preparing for adulthood** and independent living
- **securing the services, provision and equipment** required by children and young people with SEN or disabilities
- **securing expertise among teachers, lecturers or other professionals** to support children and young people with SEN or disabilities – this should include professional development to secure expertise at different levels:
  1. **awareness** (to give a basic awareness of a particular type of SEN, appropriate for all staff who will come into contact with a child or young person with that type of SEN)
  2. **enhanced** (how to adapt teaching and learning to meet a particular type of SEN, for early years practitioners, class and subject teachers/lecturers and teaching assistants working directly with the child or young person on a regular basis), and
  3. **specialist** (in-depth training about a particular type of SEN, for staff who will be advising and supporting those with enhanced-level skills and knowledge)
- **assessing and evaluating** the effectiveness of the education and training provision they make for children and young people with SEN or disabilities
- **enabling** disabled children and young people and those with SEN to have **access** to facilities and extra-curricular activities that are available to those who use the setting, and

- supporting the **emotional, mental and social** development of disabled children and young people and those with SEN (this should include extra pastoral support arrangements for listening to the views of pupils and students with SEN and measures to prevent bullying)

### **Schools**

4.34 Schools have additional duties under the Special Educational Needs and Disability Regulations 2014. **Schools must publish more detailed information about their arrangements for identifying, assessing and making provision for pupils with SEN.**

4.35 The information **must** also include information about the arrangements for the **admission of disabled pupils**, the steps taken to **prevent disabled pupils from being treated less favourably** than other pupils, the facilities provided to **assist access for disabled pupils and the schools' accessibility plans**. The school-specific information should relate to the **school's arrangements for providing a graduated response to children's SEN. It should elaborate on the information provided at a local authority wide level in the Local Offer.**

ided to **assist access for disabled pupils and the schools' accessibility plans**. The school-specific information should relate to the **school's arrangements for providing a graduated response to children's SEN. It should elaborate on the information provided at a local authority wide level in the Local Offer.**

- **Training and apprenticeships**
- **Transport**
- **Support available to children and young people to help them prepare for adulthood**
- **Information about how to seek an EHC assessment**

4.57 The Local Offer **must** include information about how to request an assessment for an EHC plan. A request is likely to happen where **special educational provision currently being made for them by their early years setting, school or college from their own resources, is not enabling the child or young person to make adequate progress.**

- **Information, advice and support**

- **Publishing the Local Offer**

## **Chapter 5 Early Years Providers**

- **What this chapter covers**

This chapter explains the action early years providers should take to meet their duties in relation to identifying and supporting all children with special educational needs (SEN), whether or not they have an Education, Health and Care (EHC) plan.

- **Relevant legislation**
  - **Primary**
  - **Regulations**
  - **Other relevant legislation**

- **Improving outcomes: high aspirations and expectations for children with SEN**

5.6 Maintained nursery schools **must**:

- **use their best endeavours** to make sure that a child with SEN gets the support they need
- ensure that children with SEN **engage** in the activities of school alongside children who do not have SEN
- designate a teacher to be responsible for **co-ordinating SEN provision** (the SEN co-ordinator, or SENCO)
- **inform parents** when they are making special educational provision for a child

They **must** also prepare a report on:

- the **implementation** of their SEN policy
- their arrangements for the **admission** of disabled children
- the steps being taken to prevent disabled children from being treated **less favourably** than others
- the facilities provided to **enable access** to the school for disabled children, and
- their **accessibility plan** showing how they plan to improve access over time
- **Equality Act 2010**

5.10 All early years providers have duties under the Equality Act 2010. In particular, they **must not discriminate against, harass or victimise disabled children, and they must make reasonable adjustments, including the provision of auxiliary aids and services for disabled children, to prevent them being put at substantial disadvantage**

- **Medical conditions**
- **SEN in the early years**
- **From birth to two – early identification**
- **Early years provision**
- **Progress check at age two**

5.21 When a child is aged **between two and three**, early years practitioners **must** review progress and provide parents with a short written summary of their child's development, focusing in particular on communication and language, physical development and personal, social and emotional development. This progress check **must** identify the child's strengths and **any areas where the child's progress is slower than expected**. If there are significant emerging concerns (or identified SEN or disability) **practitioners should develop a targeted plan** to support the child, involving other professionals such as, for example, the setting's SENCO or the Area SENCO, as appropriate.

5.35 Where a maintained nursery school makes special educational provision for a child with SEN they **must** inform the parents and should **adopt a graduated approach with four stages of action: assess, plan, do, review**.

- **Assessment at the end of the EYFS – The Early Years Foundation Stage Profile**

- **Identifying needs in the early years**
- **SEN support in the early years**

5.34 Where a setting identifies a child as having SEN they **must** work in **partnership with parents** to establish the support the child needs. This does not necessarily need to be an EHC plan.....often meeting needs through the support set out in the Local Offer (for example, provision of key working support) may be more valuable to parents at this time than beginning an EHC needs assessment.

- **Assess**
- **Plan**
- **Do**
- **Review**
- **Involving specialists**

5.43 Where, despite **purposeful action** by the setting, a child continues to make **little or no progress** over a **sustained period**, practitioners should consider involving appropriate specialists, for example, health visitors, speech and language therapists, Portage workers, educational psychologists or specialist teachers. The decision to involve specialists should be taken with the child's parents.

- **Requesting an Education, Health and Care assessment**

5.44 Where, despite the setting having taken relevant and purposeful action to identify, assess and meet the special educational needs of the child, the child has not made good progress, the setting should consider requesting an Education, Health and Care assessment.

- **Record keeping**
- **Keeping provision under review**

- **The role of the SENCO in early years provision**

5.47 A maintained nursery school **must** ensure that there is a **qualified teacher** designated as the SENCO in order to ensure the detailed implementation of support for children with SEN. This individual should also have the prescribed qualification for SEN Co-ordination or relevant experience.

- **The role of the Area SENCO**
- **Funding for SEN support in the early years**

## **Chapter 6 Schools**

- **What this chapter covers**

This chapter explains the action that mainstream schools should take to meet their duties in relation to identifying and supporting all children with special educational needs (SEN) whether or not they have an Education, Health and Care (EHC) plan.

- **Relevant legislation**
- **Primary**

- **Regulations**
- **Other relevant legislation**

- **Improving outcomes: high aspirations and expectations**

6.2 Every school is required to meet the SEN of the children or young people that they support.

Mainstream schools **must**:

- **use their best endeavours** to make sure that a child with SEN gets the support they need – this means doing everything they can to meet children and young people’s SEN
- ensure that children and young people with SEN **engage** in the activities of the school alongside pupils who do not have SEN
- designate a teacher to be responsible for **co-ordinating SEN** provision (the SEN co-ordinator, or SENCO)
- **Inform parents** when they are making special educational provision for a child
- **prepare a report** on the implementation of their SEN policy and their arrangements for the **admission** of disabled children, the steps being taken to prevent disabled children from being **treated less favourably** than others, the **facilities** provided to **enable access** to the school for disabled children and their **accessibility plan** showing how they plan to improve access progressively over time

6.3 **School leaders** should regularly review how expertise and resources used to address SEN can be used to build the quality of whole-school provision as part of their approach to **school improvement**.

6.4 The **quality of teaching** for pupils with SEN, and the **progress** made by pupils, should be a core part of the school’s **performance management arrangements** and its approach to professional development for all teaching and support staff.

6.6 The arrangements for **identifying and assessing pupils** as having SEN should be agreed and set out as part of the **Local Offer**. A school should publish its arrangements as part of the information it makes available on SEN (see the Special Educational Needs and Disability Regulations 2014).

- **Equality and inclusion**

- **Medical conditions**

Schools are required to have regard to statutory guidance supporting pupils at school with medical conditions (DfE, 2014).

- **Curriculum**

- **Identifying SEN in schools**

6.12 A pupil has SEN where their **learning difficulty or disability** calls for **special educational provision**, that is provision **different from or additional to** that normally available to pupils of the same age. Making higher quality teaching normally available to the whole class is likely to mean that fewer pupils will require such support.

6.13 Schools should **assess each pupil’s current skills and levels of attainment on entry**, building on information from previous settings and key stages where appropriate.

6.14 Class and subject teachers, supported by the senior leadership team, should make regular assessments of progress for all pupils.

6.16 The first response to such progress should be **high quality teaching** targeted at their **areas of weakness**. Where progress continues to be less than expected, the **class or subject teacher, working with the SENCO**, should assess whether the child has SEN.

6.18 If it is thought **housing, family or other domestic circumstances** may be contributing to the presenting behaviour a **multi-agency approach**, supported by the use of approaches such as the early help assessment, may be appropriate.

6.20 **Slow progress and low attainment** do not necessarily mean that a child has SEN and should not automatically lead to a pupil being recorded as having SEN. However, they may be an indicator of a range of learning difficulties or disabilities. Equally, it should not be assumed that **attainment in line with chronological age** means that there is no learning difficulty or disability.



6.22 When reviewing and managing special educational provision the broad areas of need and support outlined may be helpful, and schools should review how **well-equipped they are to provide support across these areas**.

6.24 These four broad areas give an overview of the range of needs that should be planned for. The purpose of identification is to work out what action the school needs to take, not to fit a pupil into a category.

➤ **Broad areas of need**

1. Communication and interaction
2. Cognition and learning
3. Social, emotional and mental health difficulties
4. Sensory and/or physical needs

○ **Special educational provision in schools**

6.34 **High quality teaching, differentiated for individual pupils**, is the **first step** in responding to pupils who have or may have SEN. Additional intervention and support cannot compensate for a lack of good quality teaching. Schools should regularly and carefully **review the quality of teaching** for all pupils, including those at risk of underachievement. This includes **reviewing, and where necessary improving, teachers' understanding of strategies to identify and support vulnerable pupils** and their **knowledge of the SEN** most frequently encountered.

6.35 In deciding whether to make special educational provision, **the teacher and SENCO** should **consider all of the information** gathered from within the school about the pupil's progress, alongside **national data and expectations of progress**. This should include high quality and accurate formative assessment, using effective tools and early assessment materials. For higher levels of need, schools should have arrangements in place to draw on more specialised assessments from external agencies and professionals.

6.36 This information gathering should include an **early discussion with the pupil and their parents**. These early discussions with parents should be structured in such a way that they develop a good understanding of the pupil's areas of strength and difficulty, the parents' concerns, the agreed outcomes sought for the child and the next steps. **A short note** of these early discussions should be added to the pupil's record on the school information system and given to the parents.

6.37 Consideration of whether special educational provision is required should start with the **desired outcomes, including the expected progress and attainment and the views and wishes of the pupil and their parents**. This should then help determine the support that is needed and whether it can be provided by adapting the school's core offer or whether something different or additional is required.

6.38 The outcomes considered should include those needed to make successful **transitions** between phases of education and to prepare for adult life.

6.39 However support is provided, a clear date for **reviewing progress** should be agreed and the parent, pupil and teaching staff should each be clear about how they will help the pupil reach the expected outcomes. Where it is decided that a pupil does have SEN, the decision should be recorded in the school records and the pupil's parents **must** be formally informed.

○ **SEN support in schools**

6.40 Where a pupil is identified as having SEN, schools should take **action to remove barriers** to learning and put effective **special educational provision** in place. This **SEN support** should take the form of a **four-part cycle** through which earlier decisions and actions are revisited, refined and revised with a growing understanding of the pupil's needs and of what supports the pupil in making good progress and securing good outcomes. **This is known as the graduated approach**.

➤ **Assess**

6.41 In identifying a child as needing SEN support, **the class or subject teacher, working with the SENCO, should carry out a clear analysis of the pupil's needs**.

6.42 This assessment should be reviewed regularly.

➤ **Plan**

6.44 Where it is decided to provide a pupil with SEN support, the **parents must be formally notified**, although parents should have already been involved in forming the assessment of needs as outlined above. **The teacher and the SENCO should agree in consultation with the parent and the pupil** the adjustments, interventions and support to be put in place, as well as the expected impact on progress, development or behaviour, along with a clear date for review.

6.46 The **support and intervention provided should be selected to meet the outcomes identified** for the pupil, based on reliable evidence of effectiveness, and should be provided by staff with sufficient skills and knowledge.

6.47 Parents should be fully aware of the planned support and interventions and, where appropriate, **plans should seek parental involvement** to reinforce or contribute to progress at home. The information set out in 6.41 should be readily available to and discussed with the pupil's parents.

### **Do**

6.48 **The class or subject teacher should remain responsible for working with the child on a daily basis.** Where the interventions involve group or one-to-one teaching away from the main class or subject teacher, they should still retain responsibility for the pupil. They should **work closely with any teaching assistants or specialist staff** involved, to plan and **assess the impact of support and interventions** and how they can be **linked to classroom teaching**. The SENCO should support the class or subject teacher in the **further assessment** of the child's particular strengths and weaknesses, in problem solving and advising on the effective implementation of support.

### **Review**

6.49 The **effectiveness of the support** and interventions and their impact on the pupil's progress should be reviewed in line with the agreed date.

6.50 ...**The class or subject teacher, working with the SENCO**, should revise the support in light of the pupil's progress and development, deciding on any changes to the support and outcomes in consultation with the parent and pupil.

#### ➤ **Involving specialists**

6.52 Where a pupil continues to make less than expected progress, despite **evidence-based support and interventions that are matched to the pupil's area of need**, the school should consider involving specialists, including those secured by the school itself or from outside agencies.

6.53 ...A school should **always involve a specialist** where a pupil continues to make little or no progress over a sustained period or where they continue to work at levels substantially below those expected of pupils of a similar age despite evidence-based SEN support delivered by appropriately trained staff. The **pupil's parents** should always be **involved** in any decision to involve specialists.

6.54 Where assessment indicates that support from specialist services is required, it is important that children and young people receive it as quickly as possible. Joint commissioning arrangements should seek to ensure that there are sufficient services to meet the likely need in an area. The Local Offer should set out clearly what support is available from different services and how it may be accessed.

6.56 The SENCO and class teacher, together with the specialists, and involving the pupil's parents, should consider a range of evidence-based and effective teaching approaches, appropriate equipment, strategies and interventions in order to support the child's progress. They should agree the outcomes to be achieved through the support, including a date by which progress will be reviewed.

#### ➤ **Requesting an Education, Health and Care assessment**

6.58 Where, despite the school having taken relevant and purposeful action to identify, assess and meet the SEN of the child or young person, the child or young person has not made expected progress, **the school or parents should consider requesting an Education, Health and Care assessment** (see Chapter 9). To inform its decision the local authority will expect to see **evidence of the action taken by the school as part of SEN support**.

### **Involving parents and pupils in planning and reviewing progress**

6.59 Schools **must** provide an annual report for parents on their child's progress

6.60 Where a pupil is receiving SEN support, **schools should talk to parents regularly** to set clear outcomes and review progress towards them, discuss the activities and support that will help achieve them, and identify the responsibilities of the parent, the pupil and the school. Schools should meet parents at least **three times each year**.

6.62 These discussions should be **led by a teacher with good knowledge and understanding of the pupil who is aware of their needs and attainment**. This will **usually be the class teacher or form tutor, supported by the SENCO**.

6.64 These discussions will need to allow **sufficient time** to explore the parents' views and to plan effectively. Meetings should, wherever possible, be aligned with the normal cycle of discussions with parents of all pupils. They will, however, **be longer than most parent-teacher meetings**.

6.65 The **views of the pupil** should be included in these discussions.

6.66 **A record of the outcomes, action and support agreed** through the discussion should be kept and shared with all the appropriate school staff. This record should be given to the pupil's parents. The school's management information system should be updated as appropriate.

### **Use of data and record keeping**

6.67 ....the provision made for pupils with SEN should be recorded accurately and kept up to date. As part of any inspection, Ofsted will expect to see evidence of **pupil progress, a focus on outcomes and a rigorous approach to the monitoring and evaluation** of any SEN support provided.

6.68 Schools should particularly record details of **additional or different provision** made under SEN support. This should form part of regular discussions with parents about the child's progress, expected outcomes from the support and planned next steps. They should ensure that they have accurate information to **evidence the SEN support that has been provided over the pupil's time in the school, as well as its impact**. A local authority that is considering or is carrying out an assessment of the pupil's needs will wish to review such information

6.70 As outlined in 'Involving parents and pupils in planning and reviewing progress' from paragraph 6.58 above, the school should readily share this information with parents.

6.71 **Provision maps** are an efficient way of showing all the provision that the school makes which is additional to and different from that which is offered through the school's curriculum.

### **Publishing information: SEN information report**

6.74 The governing bodies of maintained schools and maintained nursery schools and the proprietors of academy schools **must** publish information on their websites about the implementation of the governing body's or the proprietor's policy for pupils with SEN. The information published **must be updated annually** and any changes to the information occurring during the year **must** be updated as soon as possible. The information required is set out in the Special Educational Needs and Disability Regulations 2014 and **must** include information about:

- the kinds of **special educational needs that are provided** for
- **policies** for **identifying** children and young people with SEN and **assessing** their needs, including the name and **contact details of the SENCO** (mainstream schools)
- arrangements for **consulting parents** of children with SEN and involving them in their child's education
- arrangements for **consulting young people** with SEN and involving them in their education
- arrangements for **assessing and reviewing** children and young people's **progress** towards outcomes, including the opportunities available to work with parents and young people as part of this assessment and review
- arrangements for supporting children and young people in **moving between phases** of education and in preparing for adulthood. As young people prepare for adulthood outcomes should reflect their ambitions, which could include higher education, employment, independent living and participation in society
- the approach to **teaching** children and young people with SEN
- how **adaptations** are made to the curriculum and the learning environment of children and young people with SEN
- the **expertise and training of staff** to support children and young people with SEN, including how specialist expertise will be secured

- evaluating the **effectiveness of the provision** made for children and young people with SEN
- how children and young people with SEN are **enabled to engage** in activities available with children and young people in the school who do not have SEN
- support for improving **emotional and social** development. This should include extra pastoral support arrangements for listening to the views of children and young people with SEN and measures to prevent **bullying**
- how the school **involves other bodies**, including health and social care bodies, local authority support services and voluntary sector organisations, in meeting children and young people's SEN and supporting their families

6.76 Schools should ensure that the **information is easily accessible** by young people and parents and is set out in clear, straightforward language. It should include information on the school's **SEN policy, named contacts** within the school for situations where young people or parents have concerns, and arrangements **for handling complaints** from parents of children with SEN about the provision made at the school. It should also give details of **the school's contribution to the Local Offer**, including information on where the **local authority's Local Offer** is published.

6.77 In setting out details of the broad and balanced curriculum provided in each year, schools should include details of **how the curriculum is adapted or made accessible** for pupils with SEN.

○ **The role of the SENCO in schools**

6.79 Governing bodies of maintained mainstream schools and the proprietors of mainstream academy schools (including free schools) **must** ensure that there is a **qualified teacher designated as SENCO** for the school.

6.80 The SENCO **must** be a qualified teacher working at the school. A **newly appointed SENCO must** be a qualified teacher and, where they have not previously been the SENCO at that or any other relevant school for a total period of more than twelve months, **they must achieve a National Award in Special Educational Needs Co-ordination** within **three years** of appointment.

6.82 The SENCO has an important role to play with the headteacher and governing body, in determining the strategic development of SEN policy and provision in the school. They will be most effective in that role if they are **part of the school leadership team**.

6.83 The SENCO has day-to-day responsibility for the **operation of SEN policy and coordination of specific provision** made to support individual pupils with SEN, including those who have EHC plans.

6.84 The SENCO provides **professional guidance** to colleagues and will work closely with staff, parents and other agencies. The SENCO should be aware of the provision in the Local Offer and be able to work with professionals providing a **support role to families** to ensure that pupils with SEN receive appropriate support and high quality teaching.

6.85 The **key responsibilities** of the SENCO **may** include:

- **overseeing** the day-to-day operation of the school's SEN policy
- **coordinating** provision for children with SEN
- **liaising** with the relevant **Designated Teacher** where a looked after pupil has SEN
- **advising** on the **graduated approach** to providing SEN support
- **advising on the deployment** of the school's **delegated budget** and other resources to meet pupils' needs effectively
- **liaising with parents** of pupils with SEN
- **liaising** with early years providers, other schools, educational psychologists, health and social care professionals and independent or voluntary bodies
- being a **key point of contact** with **external agencies**, especially the local authority and its support services, liaising with potential next providers of education to ensure a pupil and their parents are informed about options and a smooth transition is planned
- working with the **headteacher and school governors** to ensure that the school meets its **responsibilities under the Equality Act (2010)** with regard to reasonable adjustments and access arrangements
- ensuring that the school keeps the **records** of all pupils with SEN up to date

6.86 The school should ensure that the SENCO has **sufficient time and resources** to carry out these functions. This should include providing the SENCO with sufficient **administrative support** and **time away from teaching** to enable them to fulfil their responsibilities in a similar way to other important strategic roles within a school.

6.87 It may be appropriate for a number of smaller primary schools to **share a SENCO** employed to work across the individual schools, where they meet the other requirements set out in this chapter of the Code.

6.89 Schools should review the effectiveness of such a shared SENCO role regularly and should not persist with it where there is evidence of a negative impact on the quality of SEN provision, or the progress of pupils with SEN.

- **Funding for SEN support**

6.90 All mainstream schools are provided with resources to support those with additional needs, including pupils with SEN and disabilities.

6.91 Schools have an amount **identified within their overall budget**, called the **notional SEN budget**. This is not a ring-fenced amount, and it is for the school to provide high quality appropriate support from the whole of its budget.

6.92 It is for schools, as part of their normal budget planning, to determine their approach to using their resources to support the progress of pupils with SEN. The SENCO, headteacher and **governing body or proprietor should establish a clear picture** of the resources that are available to the school. They should consider their **strategic approach** to meeting SEN in the context of the total resources available, including any resources targeted at particular groups, such as the **pupil premium**.

6.93 This will enable schools to provide a clear description of the types of **special educational provision they normally provide** and will help parents and others to understand what they can **normally expect the school to provide** for pupils with SEN

6.94 Schools are **not expected** to meet the full costs of more expensive special educational provision from their core funding. They **are expected to provide additional support which costs up to a nationally prescribed threshold** per pupil per year. The responsible local authority, usually the authority where the child or young person lives, **should provide additional top-up funding** where the cost of the special educational provision required to meet the needs of an individual pupil exceeds the nationally prescribed threshold.

## Chapter 7 Further Education

- **What this chapter covers**

This chapter explains and provides guidance on the statutory duties on further education colleges, sixth form colleges, 16-19 academies and some independent specialist colleges to identify, assess and provide support for young people with special educational needs (SEN).

- **Relevant legislation**
- **Primary**
- **Regulations**
- **Introduction**
- **Statutory duties on post-16 institutions**
- **Equality Act 2010**
- **Identifying SEN**
- **SEN support in college**
- **Assessing what support is needed**
- **Planning the right support**
- **Putting the provision in place**
- **Keeping support under review**
- **Expertise within and beyond the college**
- **Record keeping**
- **Funding for SEN support**

## Chapter 8 Preparing for adulthood from the earliest years

- **What this chapter covers**

This chapter **sets out how professionals across education** (including early years, schools, colleges and 16-19 academies), **health and social care** should support children and young people with **special educational needs (SEN)** or **disabilities to prepare for adult life**, and help them go on to achieve the best outcomes in employment, independent living, health and community participation. The principles set out in this chapter apply to **all young people with SEN or disabilities**, except where it states they are for those with Education, Health and Care (EHC) plans only.

- **Relevant legislation**

- **Primary**

- **Regulations**

- **Introduction**

8.1 ...This support needs to start early, and should centre around the **child or young person's own aspirations, interests and needs**. All professionals working with them should share high aspirations and have a good understanding of what support is effective in enabling children and young people to achieve their ambitions.

- **Strategic planning for the best outcomes in adult life**

- **Duties on local authorities**

- **Starting early**

8.8 Early years providers and schools should support children and young people so that they are included in social groups and develop friendships....Maintained nurseries and schools **must** ensure that, subject to certain conditions, pupils with **SEN engage in the activities** of the nursery or school together with those who do not have SEN, and are encouraged to participate fully in the life of the nursery or school and in any wider community activity.

- **Support from Year 9 onwards (age 13-14)**

8.9 High aspirations about employment, independent living and community participation should be developed through the curriculum and extra-curricular provision. **Schools should seek partnerships with employment services, businesses, housing agencies, disability organisations and arts and sports groups**, to help children understand what is available to them as they get older, and what it is possible for them to achieve. For children with EHC plans, personal budgets can be used to help children and young people with SEN to access activities that promote greater independence and learn important life skills.

- **Children and young people with EHC plans: preparing for adulthood reviews**

8.11 Local authorities **must** ensure that the EHC plan review at Year 9, and every review thereafter, includes a focus on preparing for adulthood.

- **Young people preparing to make their own decisions**

8.15 As **young people** develop, and increasingly form their own views, they **should be involved more and more closely in decisions** about their own future. **After compulsory school age** (the end of the academic year in which they turn 16) the right to make decisions etc. under the Children and Families Act 2014 **applies to them directly**, rather than to their parents.

- **16- to 17-year-olds**

- **Support for young people**

8.20 Some young people will need support from an **independent skilled supporter** to ensure that their views are acknowledged and valued.

- **The Mental Capacity Act**

8.21 The right of young people to make a decision is subject to their capacity to do so as set out in the Mental Capacity Act 2005.

- **Planning the transition into post-16 education into post-16 education and training**

8.23 As children approach the transition point, schools and colleges should help children and their families with more detailed planning. For example, in **Year 9**, they should aim to help children explore their aspirations and how different post-16 education options can help them meet them. FE

colleges and sixth form colleges can now recruit students directly from age 14, and so this will be an option in some cases. In **Year 10** they should aim to support the child and their family to explore more specific courses or places to study (for example, through taster days and visits) so they can draw up provisional plans. In **Year 11** they should aim to support the child and their family to firm up their plans for their post-16 options and familiarise themselves with the expected new setting. This should include contingency planning and the child and their family should know what to do if plans change (because of exam results for example).

8.24 It is important that **information** about previous SEN provision **is shared** with the further education or training provider. Schools should share information before the young person takes up their place, preferably in the spring term prior to the new course, so that the provider can develop a suitable study programme and prepare appropriate support.

8.25 Schools and colleges should work in **partnership** to provide opportunities such as taster courses, link programmes and mentoring which enable young people with SEN to familiarise themselves with the college environment and gain some experience of college life and study.

8.26 For children and young people with EHC plans, discussions about post-16 options will be part of the preparing for adulthood focus of ECH plan reviews, which **must** be included as part of the review from Year 9 (age 13-14).

- **Careers advice for children and young people**

8.29 Maintained schools and pupil referral units (PRUs) have a **statutory duty** under section 42A of the Education Act 1997 to ensure pupils from Year 8 until Year 13 are **provided with independent careers guidance**. Academies, including 16-19 academies and free schools are subject to this duty through their Funding Agreements. FE colleges also have equivalent requirements in their Funding Agreements – their duty applies for all students up to and including age 18 and will apply to 19-25 year olds with EHC plans.

8.30 Schools and colleges should **raise the career aspirations of their SEN students** and broaden their employment horizons. They should use a wide range of imaginative approaches, such as taster opportunities, work experience, mentoring, exploring entrepreneurial options, role models and inspiring speakers.

- **High quality study programmes for students with SEN**

8.32 All students aged 16-19 (and, where they will have an EHC plan, up to the age of 25) should follow a **coherent study programme which provides stretch and progression** and enables them to achieve the best possible outcomes in adult life. Schools and colleges are expected to design study programmes which enable students to progress to a **higher level of study than their prior attainment, take rigorous, substantial qualifications, study English and maths, participate in meaningful work experience and non-qualification activity**.

- **Pathways to employment**

- **Packages of support across five days a week**

- **Transition to higher education**

- **Young people aged 19-25**

- **Funding places for 19-25 year olds**

8.53 19-25 year olds with EHC plans should have free access to further education in the same way at 16-18 year olds. Colleges or training providers **must not** charge young people tuition fees for such places as the funding will be provided by the local authority and the EFA.

- **Transition to adult health services**

- **Transition to adult social care**

- **Transition assessments for young people with EHC plans**

- **Continuity of provision**

- **EHC plans and statutory care and support plans**

- **Personal Budgets**

- **Leaving education or training**

## **Chapter 9 Education, health and care needs assessment and plans**

- **What the chapter covers**

This chapter covers all the key stages in statutory assessment and planning and preparing the Education, Health and Care (EHC) plan, and guidance on related topics.

- **Relevant legislation**

- **Primary**

- **Regulations**

- **Introduction**

9.1 The **majority of children and young people with SEN or disabilities** will have their needs met **within local mainstream** early years settings, schools or colleges. Some children and young people may require an EHC needs assessment in order for the local authority to decide whether it is necessary for it to make provision in accordance with an EHC plan.

9.3 A **local authority must conduct an assessment** of education, health and care needs when it considers that it may be necessary for special educational provision to be made for the child or young person in accordance with the EHC plan. **This is likely to be where the special educational provision required to meet the child or young person's needs cannot reasonably be provided from within the resources normally available to mainstream** early years providers, schools and post-16 institutions.

9.5 An **EHC needs assessment will not always lead to an EHC plan**. The information gathered during an EHC needs assessment may indicate ways in which the school, college or other provider can meet the child or young person's needs without an EHC plan.

- **Requesting an EHC needs assessment**

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

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

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

- **Considering whether an EHC needs assessment is necessary**

9.13 In considering whether an EHC needs assessment is necessary, the local authority should consider whether there is **evidence** that despite the early years provider, school or post-16 institution having taken **relevant and purposeful action to identify, assess and meet the special educational needs** of the child or young person, the child or young person has **not made expected progress**. To inform their decision the local authority will need to take into account a wide range of evidence, and should pay particular attention to:

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

9.15 The local authority **must decide whether or not to proceed with an EHC needs assessment**, and **must** inform the child's parent or the young person of their decision within a **maximum of six weeks** from receiving a request for an EHC needs assessment (or having otherwise become responsible).



9.17 If the local authority decides **not to conduct an EHC needs assessment** it **must** inform the child's parents or the young person of their **right to appeal** that decision and the time limit for doing so, of the requirement for them to consider mediation should they wish to appeal, and the availability of information, advice and support and disagreement resolution services.

- **Principles underpinning co-ordinated assessment and planning**
- **Involving children, young people and parents in decision-making**
- **Support for children, young people and parents**
- **Sharing information**
- **Timely provision of services**
- **Cross-agency working**
- **Looked after children**

- **Timescales**

9.38 The **whole process of EHC needs assessment and EHC plan development**, from the point when an assessment is requested (or a child or young person is brought to the local authority's attention) until the final EHC plan is issued, **must take no more than 20 weeks** (subject to exemptions set out below).

- **The timescales for EHC needs assessment and the preparation of an EHC plan**
- **Advice and information for EHC needs assessments**
- **Deciding whether to issue an EHC plan**
- **Decision not to issue an EHC plan**
- **Transparent and consistent decision-making**
- **Writing the EHC plan**
- **Content of EHC plans**
- **Outcomes**
- **What to include in each section of the EHC plan**
- **Agreeing the health provision in EHC plans**

9.68 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 or disabilities** for whom it is responsible.

- **Responsibility for provision**

9.71 **Health or social care provision** which **educates or trains** a child or young person is to be treated as **special educational provision** and included in that section of the EHC plan.

9.74 In cases where health care provision or social care provision is treated as **special educational provision**, ultimate responsibility for **ensuring that the provision is made** rests with **the local authority** (unless the child's parent has made suitable arrangements) and the child's parent or the young person will have the right to appeal to the First-tier Tribunal for SEN and Disability where they disagree with the provision specified.

- **The draft EHC plan**
- **Requests for a particular school, college or other institution**

9.76 The child's parent or the young person has the **right to request a particular school**, college or other institution of the following type to be named in their EHC plan:

- *maintained nursery school*
- *maintained school and any form of academy or free school (**mainstream or special**)*
- *non-maintained special school*
- *further education or sixth form college*

9.77 If a child's parent or a young person **makes a request** for a particular nursery, **school** or post-16 institution in these groups **the local authority must comply with that preference** and name the school or college in the EHC plan unless:

- *it would be unsuitable for the age, ability, aptitude or SEN of the child or young person, or*
- *the attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources*

9.78 The local authority **must consult** the governing body, principal or proprietor of the **school** or college concerned and consider their comments very carefully before deciding whether to name it

in the child or young person's EHC plan, sending the school or college a copy of the draft plan. If another local authority maintains the school, they too **must** be consulted.

9.79 The local authority **must** also **seek the agreement** of the nursery, school or post-16 institution where the draft plan **sets out any provision to be delivered on their premises which is secured through a direct payment**.

- **Where no request is made for a particular school or college**
- **Reasonable steps**

- **Requesting a Personal Budget**

9.92 A Personal Budget is an **amount of money** identified by the local authority to **deliver provision set out in an EHC plan** where the parent or young person is involved in securing that provision.

9.95 Parents and young people have a **right to request** a Personal Budget, when the local authority has **completed an EHC needs assessment** and confirmed that it will prepare an EHC plan. They may also request a Personal Budget **during a statutory review** of an existing EHC plan.

- **Mechanisms for delivery of a personal budget**
- **Setting and agreeing the Personal Budget**

9.99 The child's parent or the young person **should be given an indication of the level of funding** available to make the provision specified, or proposed to be specified in the EHC plan..... Final allocation of funding budget **must** be sufficient to secure the agreed provision specified in the EHC plan and **must** be set out as part of that provision.

9.101 Before a direct payment is made, **the local authority must agree in writing, with the person to whom the direct payments are to be made**. Parents and young people should confirm their decision and agreement of the budget alongside any request for a particular school, college or other institution to be named in the EHC plan.

9.102 The local authority should **seek assurance** from the parent, young person or nominee that **any person employed by the parent or young person but working on school or college premises, will conform to the policies and procedures of that institution**.

- **Scope of personal budgets**

9.109 The special educational provision specified in an EHC plan **can include provision from both the school's budget share** (or in colleges from their formula funding) and more **specialist provision funded wholly or partly from the local authority's high needs funding**. It is this **latter funding that can lend itself to disaggregation for use as personal budgets**, although schools and colleges **should be encouraged to personalise the support they provide** and they can **choose to contribute their own funding to a personal budget** (this will usually be an organised arrangement managed by the setting, but some schools and colleges, including specialist settings, have made innovative arrangements with young people, giving them direct (cash) payments).

9.110 **High needs funding** can also be used to **commission services from schools and colleges, including from special schools**. In practice, this will mean the **funding from the local authority's high needs budget for the SEN element of a personal budget will vary depending on how services are commissioned locally and what schools and colleges are expected to provide as part of the Local Offer**. The child's parent or the young person should be made aware that the scope for a personal budget varies depending on their school preference.

- **Use of direct payments**

- **Finalising and maintaining the EHC plan**

9.127 The **headteacher** or principal of the school, college or other institution named in the EHC plan should **ensure that those teaching or working with the child or young person are aware of their needs and have arrangements in place to meet them**.

- **Maintaining Special educational provision in EHC plans**
- **Maintaining social care provision in EHC plans**

- **Maintaining health provision in EHC plans**
- **Specific age ranges**
- **All children under compulsory school age**
- **Children aged under 2**
- **Children aged 2 to 5**
- **Young people aged 19 to 25**
- **Transfer of EHC plans**
- **Transfers between local authorities**
- **Transfers between clinical commissioning groups**

- **Reviewing an EHC plan**

9.162 EHC plans should be used to **actively monitor** children and young people's **progress towards their outcomes and longer term aspirations**. They **must** be reviewed by the local authority **as a minimum every 12 months**. Reviews **must** focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan.

9.164 Reviews **must** be undertaken in **partnership with the child and their parent** or the young person, and **must** take account of their views, wishes and feelings, including their right to request a Personal Budget.

- **Reviews where a child or young person attends a school or other institution**

9.172 The following requirements apply to reviews where a child or young person attends a school or other institution:

- The **child's parents** or young person, a **representative of the school** or other institution attended, a **local authority SEN officer**, a **health service representative** and a **local authority social care representative must be invited** and given at least **two weeks'** notice of the date of the meeting. Other individuals relevant to the review should also be invited, including youth offending teams and job coaches where relevant.
- **The school** (or, for children and young people attending another institution, the local authority) **must seek advice and information** about the child or young person **prior to the meeting from all parties invited**, and send any advice and information gathered to all those invited **at least two weeks** before the meeting.
- The meeting **must focus on the child or young person's progress towards achieving the outcomes specified in the EHC plan**, and on what **changes** might need to be made to the support that is provided to help them achieve those outcomes, or whether changes are needed to the outcomes themselves. Children, parents and young people should be supported to engage fully in the review meeting.
- **The school** (or, for children and young people attending another institution, the local authority) **must prepare and send a report of the meeting to everyone invited within two weeks of the meeting**. The report **must set out recommendations on any amendments** required to the EHC plan, and should refer to any difference between the school or other institution's recommendations and those of others attending the meeting.
- Within four weeks of the review meeting, **the local authority must decide** whether it proposed to keep the EHC plan as it is, amend the plan, or cease to maintain the plan, and notify the child's parent or the young person and the school or other institution attended.
- If the plan needs to be amended, the local authority should start the process of amendment without delay.
- If the local authority decides not to amend the plan they **must** notify the child's parent or the young person of their right to appeal that decision and the time limits for doing so, of the requirements for them to consider mediation should they wish to appeal, and the availability of information, advice and support and disagreement resolution services.
- **Reviews where a child or young person does not attend a school or other institution**
- **Reviews of EHC plans for children aged 0-5**
- **Transfer between phases of education**
- **Preparing for adulthood in reviews**

- Re-assessments of EHC plans
- Requesting a re-assessment

9.182 Local authorities **must** conduct a re-assessment of a child or young person's EHC plan if a request is made by the **child's parent** or the **young person**, or the governing body, proprietor or principal of the **educational institution attended** by the child or young person, or the CCG (or NHS England where relevant).

- **The re-assessment process**

- Amending an existing plan
- Ceasing an EHC plan
- Disclosure of an EHC plan
- Transport costs for children and young people with EHC plans

## **Chapter 10 Children and young people in specific circumstances**

- **What this chapter covers**

*This chapter highlights particular groups of children and young people whose **specific circumstances** require **additional consideration** by those who work with and support their special educational needs (SEN). It sets out information about managing their circumstances in order to achieve effective joined-up service provision that can help achieve good outcomes for them. These groups include:*

- *looked after children*
- *care leavers*
- *children and young people with SEN and social care needs, including children in need*
- *children and young people educated out of area*
- *children and young people with SEN who are educated at home*
- *children and young people in alternative provision*
- *children and young people who have SEN and are in hospital*
- *children and young people in youth custody*
- *children of service personnel*

- **Relevant legislation**

- **Looked after children**

10.1 Children who are being accommodated, or who have been taken into care, by a local authority (i.e. under section 20, or sections 31 or 38 of the Children Act 1989) are legally defined as being 'looked after' by the local authority. Around **70% of looked after children have some form of SEN**, and it is likely that a significant proportion of them will have an Education Health and Care (EHC) plan.

- **Care leavers**

- **SEN and social care needs, including children in need**

- **Children's social care**

- **Power to continue children's social care services to those aged 18 to 25**

- **Children and young people educated out of area**

- **Children and young people with SEN educated at home**

- **Children with SEN who are in alternative provision**

10.41 Local authorities, **schools** and post-16 education providers **may commission alternative provision** for other children and young people who face **barriers to participation** in mainstream education or training.

- **Children and young people in alternative provision because of health needs**

- **Children and young people with SEN who are in youth custody**

- **Summary of statutory requirements**

- **Identifying educational needs and sharing information**

- **EHC needs assessments for children and young people in youth custody**

- **Appeals and mediation**

- **Education for children and young people in youth custody**

- **Health care for children and young people in youth custody**
- **Education for children and young people on release from youth custody**
- **Transition from youth justice to a custodial establishment for adults**
- **Education on release for those in a custodial establishment for adults**

- **Children of Service personnel**

- **Action to take in respect of Service children with SEN**

- **First-tier Tribunal (SEN and Disability) 209**

- **Further information**

## **Chapter 11 Resolving disagreements**

- **What this chapter covers**

*This chapter is primarily about **resolving disagreements** between parents or young people and early years providers, schools, colleges, local authorities or health commissioners. It:*

- *supports early resolution of disagreements at the local level*
- *explains the independent disagreement resolution arrangements which local authorities **must** make available for disagreements across special educational provision, and health and care provision in relation to EHC plans*
- *also explains the independent mediation arrangements which parents and young people can use before deciding whether to appeal to the First-tier Tribunal (Special Educational Needs (SEN) and Disability) (“the Tribunal”) and for health and social care complaints in relation to EHC plans*
- *goes on to describe the conditions for appealing to the Tribunal or making disability discrimination claims. It finishes by describing local complaint procedures and health and social services complaints procedures*

- **Relevant legislation**

- **Primary**

- **Regulations**

- **Principles for resolving disagreements**

- **Early resolution of disagreements**

- **Disagreement resolution services**

*11.6 Local authorities **must** make disagreement resolution services available to parents and young people. Use of the disagreement resolution services is voluntary and has to be with the agreement of all parties. The service, while commissioned by it, **must** be independent of the local authority – **no one who is directly employed by a local authority** can provide disagreement resolution services.*

*11.7 Disagreement resolution arrangements cover all children and young people with SEN and a range of disagreements, as set out in paragraph 11.8.*

*11.8 The disagreement resolution service is to help resolve four types of disagreement or to prevent them from escalating further:*

- *The first is between **parents or young people and** local authorities, the governing bodies of maintained **schools** and maintained nursery schools, early years providers, further education institutions or the proprietors of academies, about how these authorities, bodies or proprietors **are carrying out their education, health and care duties for children and young people with SEN, whether they have EHC plans or not**. These include duties on the local authority to keep their education and care provision under review, the duties to assess and draw up EHC plans **and the duty** on governing bodies and proprietors **to use their best endeavours to meet children and young people’s SEN***
- *The second is disagreements between **parents or young people** and early years providers, **schools** or post-16 institutions **about the special educational provision made for a child or young person, whether they have EHC plans or not***
- *The third is disagreements between **parents or young people** and **CCGs or local authorities** about **health and social care provision** during EHC needs assessments, while EHC plans are being drawn up, reviewed or when children or young people are being reassessed. Disagreement resolution services can also be used to resolve disagreements over special*

educational provision throughout assessments, the drawing up of EHC plans, while waiting for or after Tribunal appeals and at review or during reassessments

- The fourth is disagreements between **local authorities and health commissioning bodies** during EHC needs assessments or reassessments, the drawing up of EHC plans or reviews of those plans for children and young people with SEN. In relation to EHC plans, this includes the description of the child or young person's education, health and care needs and any education, health and care provision set out in the plan. These disagreements do not involve parents and young people.

- **Contracting disagreement resolution services**
- **Mediation - mediation information and advice**
- **Process**
- **Exceptions to the requirement to contact a mediation adviser**
- **Going to mediation**
- **Contracting services for mediation and mediation information and advice**
- **Mediation advice before mediation**
- **Children and young people in youth custody**
- **Registering an appeal with the Tribunal**
- **Parents' and young people's right to appeal to the Tribunal about EHC assessments and EHC plans**
- **The First-tier Tribunal (SEN and disability)**
- **The role and function of the Tribunal**
- **Who can appeal to the Tribunal about EHC assessments and plans**
- **What parents and young people can appeal about**
- **Conditions related to appeals**
- **Decisions the Tribunal can make**
- **How parents and young people can appeal**
- **Disability discrimination claims**

11.47 The **parents of disabled children and disabled young people** in school have the right to make **disability discrimination claims** to the Tribunal if they believe that their children or the young people themselves **have been discriminated against** by schools or local authorities when they are the responsible body for a school. Claims **must** be made within six months of the alleged instance of discrimination. The **parents of disabled children**, on behalf of their children, and disabled young people in school **can make a claim against any school** about alleged discrimination in the matters of **exclusions, the provision of education and associated services and the making of reasonable adjustments, including the provision of auxiliary aids and services.**

- **Exclusion**
- **Legal aid**
- **Complaints procedures**
- **Early education providers' and schools' complaints procedures**
- **Complaints to the Secretary of State**
- **Complaints to Ofsted**
- **Post-16 institution complaints**
- **Local Authority complaints procedures**
- **Local Government Ombudsman**
- **The Parliamentary and Health Service Ombudsman**

#### **Judicial review**

- **NHS Complaints**
- **Complaints about social services provision**

#### **Annex 1: Mental capacity**

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